MONITORING THE COURT CASES AGAINST JOURNALISTS ACCUSED OF DEFAMATION AND INSULT

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INTRODUCTION

The project **"Monitoring the prosecution of journalists before the domestic courts of the Republic of Macedonia"** has been implemented for the second time by the Coalition "All for fair trials" through the courts of the Republic of Macedonia. Its implementation is based on observing a number of criminal cases in which journalists and key editors were charged with defamation and insult in order to draw appropriate conclusions about the movement of the offenses mentioned in the national judicial practice, the efficiency of treatment by the authorities and especially, the respect of the human rights and freedoms, guaranteed by the Constitution and the laws before the courts in criminal proceedings.

Of course, the analysis of data obtained from the survey can not be imagined without a previous consideration of issues related to the basic protective framework of freedom to expression, or more specifically, a reference to the established international standards and national penal regulation which stands on the need of finding an appropriate balance between the right of freedom to expression as one of the fundamental rights established in the most important international instruments and the right to respect the private and family life, reputation and dignity of individuals that often may be in collision.

Therefore, before we go into the consideration and detailed analysis of the obtained data on offenses, defamation and insult as well as their participation in the judicial practice before courts in the Republic of Macedonia in the observed period - October, 2010 - July 2011, we will give a short theoretical view regarding defamation and insult offences, their placement in the systematics of the special section of the Criminal Code of the Republic of Macedonia, the importance of reputation as a protected object in criminal law and the need to activate the punitive mechanism of protection in this area.

It should be noted the fact that the freedom of the media, in the modified image of the system of values, opens a series of challenges and dilemmas that deserve special attention. Here, however, remains the main conception according to which the exercise of a right by the individual, in any case, should not violate or restrict the right of another person. The opposite would mean a different valuation, or providing different levels of protection of in fact, equal rights of every individual.

The specific terms and conditions of accountability for acts of defamation and insult in the national criminal legislation also, are an integral part of our presentations, where special attention is given to the reform processes in the system of sanctions that are moving towards milder punishment of the perpetrators of these criminal offences. Before we turn to a detailed analysis of data from the conducted survey, we will briefly display the legal solutions that provide the opportunity for imposing judicial reprimand, and even more and release from punishment of the offender when it comes to acts of defamation and insult, according to the national legislation.

Finally, in the third part of the analysis, the issues related to the offenses of defamation and insult, are respected in detail key, through the prism of the domestic jurisprudence.

When the analysis and the perception of the practical experience related to our topic, were made, several major landmarks were taken into account, including:

- the time period in which the monitoring was made;
- the participation of the offenses defamation and insult in cases where journalists appear as perpetrators of the said offenses;
- penal liability of the legal entities for acts of defamation and insult;
- initiation and duration of the criminal procedure for such offenses when it comes to pre-specified range of offenders (journalists and executive editors);[1]
- past time interval from the time of committing the offense till the filing a private lawsuit for defamation offenses and / or insult;
- the time period from filing a private lawsuit till the scheduling of the first hearing;
- reasons for delays of the criminal proceedings in the cases of acts of defamation and insult in which as defendants appear journalists and executive editors;
- sanctioning of the journalists and the executive editors accused of defamation and insult;
- (dis) respect for fair trial standards when it comes to these crimes by the domestic courts before which criminal proceedings for defamation and insult are led, considering the basic standards set by the European Convention on Human Rights;
- practice of other (extrajudicial) mechanisms for "end" of the court cases which are led for acts of defamation and insult.

[1]It is necessary to note that the subject of analysis represent cases in which there are offences of defamation and insult where as defendants appear not only journalists, but the executive editors as well, hence, the data that will be presented later on, concerns each of the aforementioned categories of persons.

RESEARCH SCOPE AND OBJECTIVES

In October 2010 the Coalition "All for Fair Trials" started the implementation of the project “Monitoring the prosecution of journalists before the domestic courts of the Republic of Macedonia”. The project is financially supported by Foundation Open Society Institute Macedonia and Network Media Program - London, and was implemented in cooperation with partner NGOs - members of the Coalition, as well as the media, the Macedonian Institute for Media, the Journalist Association of the Republic Macedonia, and the basic courts covering the entire territory of Macedonia.

Considering the aspiration of providing impartial and reliable information on present situation at national level in terms of prosecution and sanctioning of journalists accused of offenses defamation and insult, within the project were undertaken several activities, such as:

- Identification of criminal proceedings in which journalists and / or executive editors are charged with defamation and insult;
- Monitoring of a number of cases (77) through the basic courts in order to draw appropriate conclusions about the movement of the mentioned offenses in the home judicial practice, the efficiency of treatment by the authorities and especially, respect for human rights and freedoms;
- Determining the length of court proceedings and recording the factors that affect the (unnecessary) delay of the proceedings, respecting the standards established by the European Convention on Human Rights and the national regulations;
- Understanding the experiences of case law regarding the responsibility of the media as legal entities for offences as defamation and insult;
- Analysis of the criminal policy of the courts;
- Statistical processing and analysis of data contained in the questionnaires for monitoring;

One of the primary objectives of the project among other things is to get to comprehensive understanding of the current situation in judiciary, and in that direction, to take adequate measures to overcome the weaknesses recorded. Finally, the formulation of concrete conclusions and recommendations based on the received data is of paramount importance and should help creating rational and balanced solutions that on the one hand, will ensure protection and respect of journalistic freedom, but at the same time will minimize the danger of jeopardizing the reputation of others.

METHODOLOGICAL APPROACH

The data that is object of analysis was collected through the monitoring of the criminal proceedings in which journalists have been charged with defamation and insult. The monitoring was carried out by the 6 monitors distributed by teams of two, covering the territory of the Basic Court in Skopje, Kumanovo, Tetovo and Bitola. The selected observers undergone additional training to enable them to successfully monitor the court cases of this kind, trough which they were very informed for the possibility to state their notes about the conduct and course of the proceedings.

The survey was conducted based on previously prepared instrument - questionnaire for observation, especially composed and adapted for the purposes of this analysis. Thus data were added and systematized in a special data base, trough which is done qualitative and quantitative data analysis. The content of the questionnaire covers all stages of criminal proceedings and its conception allows obtaining information on specific segments of the object of research, such as:

- Before which court the case is conducted, name and surname of the judge who handles the matter;
- Date of the monitoring, duration of the hearing, and which hearing in a row it is for the particular case;
- The offence for which there it is proceeded (defamation and / or insult);
- Name, surname and occupation of private plaintiff;
- Details for the accused (defendants);
- Crime and description of the particular case for which the proceeding is led;
- Was there an offered reconciliation and in what form (apologies, public apology) and whether the apology was accepted;
- The time interval from the time of execution of the offence till the private lawsuit filing, from whose side it has been filed, as well as the period from filing of the complaint till the scheduling of the first hearing;
- Was there a proposal for realization of propertiary rights - claim by the plaintiff and to what amount;
- Was there a proper summoning of the persons whose presence is required at the trial and how they were informed;
- Data about how many cases are being tried in absentia or issued an order for detention;
- Reasons for delay and disruption of the trial hearing;
- Date and time for when the trial is rescheduled;
- The flow of the presentation of the evidence before the court;
- Have the fair trial standards been respected;

- Details for the court verdict (when was the verdict announced, the type of conviction and sentence, was it determined impunity because the defendant proved that he had reasonable ground to believe in what he expressed;
- The time period from the commencement of the judicial proceeding till the passing of the verdict.

In order to smooth implementation of the monitoring of court cases, first, it was necessary to identify criminal cases where as the defendants for offences defamation and insult appear journalists, including editors and executive editors. In that sense, some difficulties have imposed noting the fact that in practice there aren't any special annual statistical reports containing recorded initiated criminal proceedings against journalists. In this regard, letters were sent to all primary courts in the Republic of Macedonia and meetings with persons responsible for public relations at the courts were made, in order to provide data for the day, the place and the time of holding the court hearings in which journalists appear as defendants. Thus, were identified 148 active cases for the period 2007 to 2010, before the Basic Court Skopje I, Skopje.

Considering that the implementation of project activities requires appropriate comparing of the results obtained from the "Defamation and insult in criminal proceedings against journalists" implemented by the Coalition in 2006,2 we started providing additional information, a request was sent to the Ministry of Justice of the Republic of Macedonia in order to obtain relevant statistical indicators for the number of initiated criminal proceedings against journalists in the period 2006 - 2010 year. Also, the Ministry helped to identify the criminal proceedings against journalists in 2010 that are conducted before the basic courts in the Republic of Macedonia.[3]

Based on the reports given by the basic courts, the actual situation is as follows: in the Basic Court in Kratovo are led 2 proceedings against journalists for defamation and insult offense, in the Basic Court Negotino there is 1 initiated criminal procedure for defamation, in the Basic Court Stip there are 3 identified cases against journalists for defamation and isult, in the Basic Court in Kumanovo and Tetovo are run 1 criminal action against journalist (s) for the offense of defamation in each of them, and in the Basic Court in Bitola also, just 1 case against a journalist who has been charged with defamation was registered, and the situation is identical before the Basic Court in Ohrid and Gostivar (1 active case);

In contrast, before the courts in Prilep, Delcevo, Kriva Palanka, Sveti Nikole, Kavadarci, Kicevo, Gevgelija, Vinica, Kocani and Krusevo, there aren't any criminal proceedings

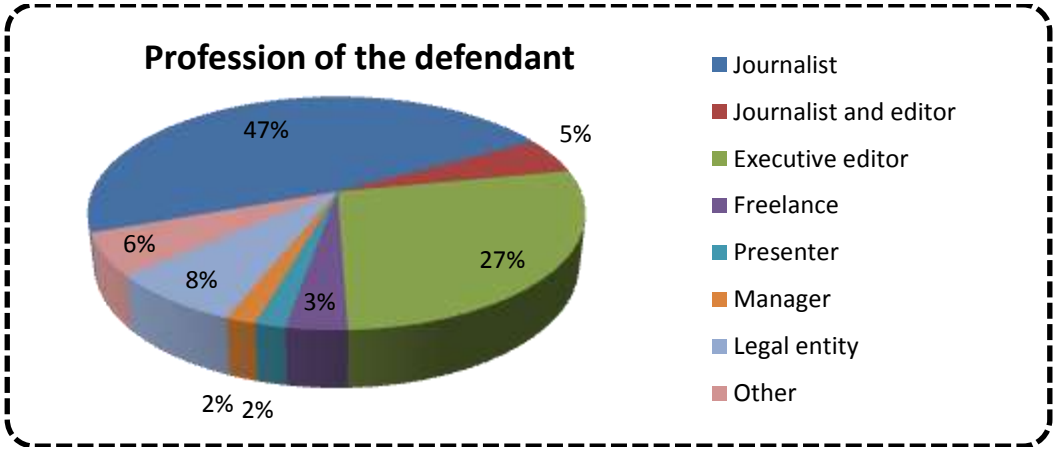
[2] The project was financially supported by the OSCE in Skopje, and was implemented in the period 15 January to 30 November, more details in Defamation and insult in criminal proceedings against journalists, Coalition "All for Fair Trials", Skopje, December 2006.

[3] The request for free access to public information was sent in December 2010.

against journalists for the offences defamation and insult. The Basic courts I Skopje, Resen, Strumica, Radovis, Debar, Struga, Veles and Berovo did not provide an answer on the request for free access to public information on the movement of the offenses defamation and insult lawsuits filed against journalists for the mentioned offences. Despite the aforementioned, data for the survey were provided through regular and ongoing communication with media, as well as the Association of Journalists of Macedonia in order to introduce the current project, and mutual assistance and cooperation in its implementation.[4]

After the identification, monitoring of criminal proceedings before the courts was carried out as follows: Basic Court Skopje I Skopje, the Basic Court in Kumanovo, Tetovo and Bitola. Out of total of 165 cases identified during the implementation, 77 subjects were monitored and thus we may conclude the following:

- The number of defendants in the cases surveyed was 120, but should be noted that in some monitored cases, as defendants appear more persons;
- 64 objects are formed against journalists for defamation (83.1%), 2 cases of insult (2.6%) and 11 cases (14.3%) are related both to defamation and insult;5
- The journalist and the editor appear as defendants in total of 6 cases or 5%;
- 33 cases of the monitored cases law procedure was filed against the executive editor (27, 5%);



- In the rest of the monitored cases as defendants appear the following persons: freelance (3.33%); presenter (1.67%), manager (1.67%); legal entity (7.5%) and the category other persons accounted for 5.83%;

[4] Data from the courts are derived based on letters sent and responses to those letters. The letters were sent in October 2010.

[5] It is important to note that certain private suits were filed for defamation and insult, or for defamation or insult separately.

For each monitored law hearing, the monitoring teams filled out a questionnaire and submitted it to the project coordinator.

Finally, it was accessed to statistical processing and analysis of data provided during the project, and as a result out of it, came out this report referring the period October, 2010 - July, 2011 was prepared.

CHAPTER I

LEGAL PROTECTION OF FREEDOM OF EXPRESSION – CONTEMPORARY DILEMMAS AND CHALLENGES

1. *Freedom of expression as a fundamental human right*

„Sir, your remarks are repugnant to me, and I disagree with your viewpoints. But I will defend to the death your right to express them.“
Voltaire (1694 - 1778)

Freedom of thought and expression, including "freedom to receive and impart information and ideas through any media and regardless of frontiers" is one of the basic civil and political rights, established in the most important international instruments on human rights and fundamental freedoms. The historical hindsight takes us closer to the oldest ideas that originate roots of XVIII and XIX century when the struggle for personal freedoms and rights, for the first time, gained normative - legal base in the U.S. Constitution, and at the same line were the solutions grounded in the constitutional laws of the countries of European soil.[6]

British philosopher John Stuart Mill, in his work "On Liberty" (1859), ranks the freedom of the press among the "basic guarantees to provide protection against corruption of the press and the tyrannical government." Also, at the same time, that freedom represents a constitutive right for a democratic system in which there is a guaranteed right of every individual (and not only of citizens of a state!) to express their opinion and criticism regarding public authority.

The emergence of the first printed media is related with the most famous French emperor Napoleon Bonaparte who complaining of the danger of the media to achieve military objectives, indicated the danger of (ab) use of the freedom of the press located in these frames. According to him, “A journalist is a grumbler, a censurer, a giver of advice, a regent of sovereigns, a tutor of nations. Four hostile newspapers are more to be feared than a thousand bayonets! "

[6]The first constitution that treats freedom of speech as a legal principle is the Constitution of Virginia in 1776, Kiprijanovska, Некои аспекти на правото на слободно изразување и неговата заштита, Зборник на трудови во чест на проф. д-р Тодор Џунов, Правен факултет „Јустинијан Први“, Скопје, 2009 год., стр. 820 etc.

Freedom of expression is not only a conditio sine qua non, i.e. condition without which the intellectual and spiritual development of each individual is impossible, but even more, it is counted among the main conditions that determine the survival of the community![5]

2. *International documents and standards for the protection of freedom of expression*

The starting point in shaping the normative solutions in the national legislations of the states and the establishment of adequate measures to protect the freedom of expression, including the right to access and transfer of information, is the international norms and standards that lift the obligation to protect the guaranteed rights to a supranational level requiring consensus approval and further shaping the national systems of states.

The freedom of expression is regulated in a number of international instruments. Such are, for example, the Universal Declaration of Human Rights (Art.19),[7] International Covenant on Civil and Political Rights (Art.19, page 2),[8] including Resolution 12/16 adopted by the UN Human Rights Council.[9] The resolution imposes a request for states - members to refrain from any restriction of this right, which is not in accordance with international standards and provisions of the ICCPR (Art.19 page 3), especially when it comes to discussion and criticism of Government's policies and social - political debates, reports of human rights, government activities and corruption in the state apparatus, involvement and active participation in election campaigns, peaceful demonstrations, public protests and political activities and others.[10и11]

The last UN document that gives detailed interpretation of the mentioned issue is the General Comment no. 34 adopted by the Human Rights Committee on July 21, 2011 (Article 19).[12] It specifically regulates the following issues: freedom of thought and the right to freedom of expression, freedom of expression and media, the right of access to information, freedom of expression and political rights, the application of the provision of paragraph 3 of the ICCPR Art.19; foundations to restrict the freedom of expression in certain areas, including the relationship between freedom of thought and expression, and

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[5] Alaburić, Sloboda izražavanja u Republici Hrvatskoj, Priručnik o slobodi javne riječi (COLIVER, Sandra, DARBSHIRE, Helen i BOŠNJAK, Mario, ur.), Article 19, London, i Press Data, Zagreb, 1998., p(6,7)

[7] „ Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

[8] „Every person has the right to freedom of expression and this right regardless of frontiers, means the freedom to gather, receive and impart information and ideas of all kinds in oral, written, printed or artistic form, or in any way by free choice."

[9] Human Rights Council by UN was established with the Resolution 60/251 at the UN General Assembly in 2006.

[10] UN Docs: A/HRC/RES/12/16. Freedom of opinion and expression. Oct. 2009, para. 5 (p) 1

[11] Other international documents pertaining to these questions are available at the following address: *http://www.coe.int/t/dghl/standardsetting/media/doc/dh-mm(2000)001_EN.asp#P748_120025*

[12] http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf

Article 20 of the ICCPR which prohibits propaganda in favor of war, like any conspiracy to national, racial or religious hatred that fosters discrimination, hostility or violence.

Among the documents adopted by the European Union, we would mention the Charter of Fundamental Rights. Article 11 contains the following wording: „ Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media shall be respected. "

The Council of Europe has long sounded the alarm on the need to protect and promote the right of free expression, as well. In this respect, important steps have been taken through the adoption of a number of relevant documents concerning the central issue. In 1982, the Committee of Ministers adopted a Declaration on freedom of expression and information and specifically pointed to the importance of freedom of expression as a necessary tool for social, economic, cultural and political development of every individual, emphasizing the need to create conditions for the harmonious progress social and cultural groups, as well as the international community, generally with the recommendation no. R (2002) 2 for access to official information adopted in 2002,[13] when for the first time regional standards for access to information contained in state authorities' documents were established. At the same time, the participation in informing the public on issues of common interest was encouraged, same as the efficiency of administration and at the same time, appropriate assistance in maintaining their integrity by avoiding the risk of corruption was indicated.[14]

At this point, we would mention the Recommendation no. R (94) 13 of the Committee of Ministers of the CE to promote media transparency. This recommendation is addressed to governments of member – states of CE which are expected to take appropriate measures in national legislation in order to enable promotion and guarantee the transparency of the media.[15]

Next step towards strengthening the protection framework in this sphere is made with the adoption of the Declaration on freedom of political debate in the media in 2004.[16] It proclaimed the fundamental principles relating to publishing information and opinions

[13] Recommendation Rec(2002)2of the Committee of Ministers to member states on access to official documents, *https://wcd.coe.int/wcd/ViewDoc.jsp?id=262135&Site=CM*

[14] The Recommendation provides access to official documents obtained by state authorities, without discrimination, when the said right may be subject to restrictions only in certain situations provided by law, in case of interests of national security, defense and international relations, privacy and other legitimate interests; investigations and prosecution of crime, commercial and other interests regardless of whether it is private or public interests, equality of the parties during the proceedings, supervision by state authorities, etc...

[15] Recommendation No. (94) 13 on measure to promote media transparency, *http://www.ebu.ch/CMSimages/en/leg_ref_coe_r94_13_transparency_221194_tcm6-4266.pdf*

[16] Declaration on freedom of political debate in the media, *http://www.ebu.ch/CMSimages/en/leg_ref_coe_decl_political_debate_120204_tcm6-11947.pdf*

about political figures and public officials in the media. Speaks of the following principles: freedom of expression and information through the media, freedom of criticism of the state or the public institutions, public debate and supervision by the public over political officials, oversight of public officials, freedom of satire, reputation and other rights of the political and public officials. Few years later, the Committee of Ministers adopted the Convention on access to official documents.[17]

However, the key role in this area belongs to the European Convention on Human Rights, which is imposes itself with the ratification of the domestic courts, not only with the authority, but, above all, with the effectiveness of the mechanism of protection. Within the rich and respected jurisprudence of the Strasbourg organs, the elements of the right to freedom of expression are relatively tightly established. The Article 10 of the Convention incorporates the basic components related to the contents of the guaranteed rights, the form of expression and the prescribed restrictions.

Placed in this context, freedom of expression applies not only to written or stated position, but to the ideas, images and actions that can express a certain idea. Besides the content, the provision protects the form of expression - media, drawings, films, Internet communications and electronic transmission of information etc.[18] In the context of the central issue, it is important to note that the European Court, often, in its decisions has emphasized the view that media is a kind of permanent observer and corrective for the authority in a democratic society. According to this standpoint, the court sets a very narrow framework for a free estimation by the states when it comes to cases in which is affected or affect the freedom of expression of the journalists.[19]

3. *Permissible grounds for restricting freedom of expression*

It is indisputable that bringing out some information in certain cases can cause serious harm to society, and therefore the obligation of the state to establish appropriate mechanisms of protection that would prevent the appearance of any injuries. All human rights instruments, more or less, provide identical grounds for limiting this right and the same tripartite test for determining the necessity and legality of imposing such restrictions on the enjoyment of the right of freedom of thought and expression (so, the Universal Declaration of Human rights, art. 29; International Covenant on Civil and Political Rights, art. 19 (3); European Convention on Human rights, Article 10. p. 2).

[17]The Convention was adopted on November 27, 2008, the text of said document in English is available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1377737&Site=CM

[18] Macovei, A guide to the implementation of Article 10 of the European Convention on Human Rights, Council of Europe, 2001, pg. 9 etc.

[19] The right of freedom of thought and expression and freedom of peaceful assembly and association, international and domestic standards and practices, Institute for Human Rights, 2010, 44 - 45

However, it seems that the provisions contained in the European Convention on Human Rights set the list of possible restrictions on a broader basis and what is more important, are characterized with greater precision.

Thus, paragraph 2 of Article 10 stipulated that this right be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. No other right contains such a long list of reasons for exceptions.

However, several key conditions should be met for restricting the right to be considered legitimate.20 We are talking about the following conditions (determinants):

1. any restriction must be regulated by law;
2. the restrictions must be placed towards achieving some of the anticipated legitimate goals; and
3. the restrictions, although they must follow legitimate goal, should be necessary in one democratic society, as well as proportionate to the action that they will cause (tripartite test).[21]

4. *National legal framework*

Freedom of thought and public expression of thought in the Republic of Macedonia are established in the highest legal act - the Constitution. The Article 16 of the Constitution guarantees freedom of belief, conscience, thought and public expression of thought, while paragraph 3 of the same article guarantees free access to information. The freedom of expression that means free sending, transmitting and receiving information is two-dimensionally determined:

1. negative freedom, freed from interference by public authority and и
2. positive freedom, which provides specific procedures and mechanisms trough which can be implemented the processes of free communication as sending, transmitting and receiving information.[22]

Given that under Article 118 of the Constitution the ratified international documents in accordance with the Constitution are part of the internal legal order and can not be

[20] *Ibid*.
[21] Tues footnote 16, p.20.
[22] Tupancheski, Kiprijanovska, Medarski, Defamation and insult - from incrimination to decriminalization, the Association of Journalists of Macedonia, Skopje, 2009..

changed by law, our legislator is left, the right of freedom of thought and expression, especially emphasizing the basis for their limitation, to comply with the provisions of the ICCPR and the ECHR to which the Republic of Macedonia approached and who are properly applicable in our legal system.[23]

The Constitutionally proclaimed principles received their concretization through the provisions contained in the relevant legal regulations, that are reaching the central issue to a lesser or greater extent. Here, we would emphasize first of all, the Criminal Code (more details on these presentations below); then the Broadcasting Law;[24] Law on Organization and Operation of the organs of the state administration;[18] Law on Internal Affairs;[19] Law on Free Access to information of public character, including the Law on offenses against public order and peace.[20]

The Code of Journalists of Macedonia as a completed system of ethical rules, contains provisions governing the manner of execution of the journalistic profession, defining their rights and duties, but also establishes certain prohibitions whose violation may lead the journalist's responsibility in front of the Board of honor of the Association of Journalists of Macedonia. Basic task of the journalists is to respect the truth and the right of the public to be informed, in accordance with Article 16 of the Constitution. Their role is to facilitate the transmission of information, ideas and opinions and the right for comments. Respecting the ethical values and the professional standards in the presentation of information, journalists are obligated to act bona fidei, objectively and accurately, trying to prevent censorship and distortion of news. Simpler, journalistic ethics is contained in three simple principles:

1. respect for truth;
2. need for independence and
3. extreme caution to the consequences of the published.[21]

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[23] The right to freedom of thought and expression and freedom of peaceful assembly and association, international and domestic standards and practices, Institute for Human Rights, 2010, 27 - 28.

[24]Article 4 of the Law explicitly indicates the importance of the right of freedom of opinion and expression, by performing the broadcasting activity, the freedom of public expression of thought, freedom of speech, public appearance and public information are being provided.

[18] „The state authorities have an obligation to provide for the citizens, an effective and lawful exercise of their constitutional rights and thus are obliged to inform the public about their work (Article 4 and 9). This right may be restricted with the interests of national security. Simultaneously, the Law provides for public involvement in the preparation of laws in their jurisdiction (Art. 10)."

[19]The provision of Art. 5 LIA, provides an obligation for the Ministry of the Interior under which the competent Ministry is obligated to the citizens, legal entities and state authorities to provide reports, data and information on issues from their scope for which they are directly interested (p.2). The same Law, also provides restriction of access to those information that are determined in accordance with the law by the appropriate classification level, except when the conditions are stipulated by a special law (p. 3).

[20] Article 10 – 13 of the Law.

[21]Tues broader, Code of Journalists of Macedonia, Association of Journalists of Macedonia, *http://www.mim.org.mk/index.php?option=com_content&view=article&id=88&Itemid=68&lang=mk*

At this point, we would like to note the role of the Constitutional Court of the Republic in correlation to the provision of Art. 110 line 3 of the Constitution, which explicitly stated that the Constitutional Court, inter alia, protects the rights and freedoms of man and citizen related to freedom of belief, conscience, thought and public expression of thought. Also,the Rulebook of judicial procedure regulates the responsibilities in the way that Article 56 states that "the Constitutional Court with the decision to protect the freedoms and rights determines whether there is violation and depending on it, repeals the individual act, prohibits the action that made the violation, or rejects the corresponding claim.

Analyzing the current practice of the Constitutional Court, can be noted that despite the initiatives submitted by the citizens to protect the freedom of expression, there hasn't been nor one decision in which it's established that this right has been violated and in which would be elaborated the position of the Constitutional Court regarding the protection of these rights. All of these initiatives in respect of those rights brought by citizens are rejected.[22]

[22]Analysis of the situation "Freedom Not Fear: Protecting the right of peaceful assembly and expression of public protest," Institute for human rights FIOOM page. 9-10, available at: http://ihr.org.mk/~ihrorg/images/stories/ihr_analiza_pravo_na_izrazuvanje_i_zdruzuvanje.pdf

CHAPTER II

DEFAMATION AND INSULT IN THE POSITIVE CRIMINAL LEGISLATION

1. Honor and Reputation as secure objects in criminal law

1.1 For the purpose of (criminal) legal protection of honor and reputation

The balance between fundamental rights stipulated in Article 10 of the European Convention and the right to respect the private and family life, reputation and dignity of the individual can be in collision, which questions the coexistence of the basic human rights. This, especially if we consider the contemporary challenges caused by technological development trends, which set a new light to the question of protection of the essential rights of every individual of the possible forms of abuse brought by the so-called information era.[23]

Within the modified image of the system of values, the freedom of media opens a series of challenges and issues that deserve special attention. Still remains, the main conception according to which the exercise of a right by the individual, in any case, one should not violate or restrict the right of another person. The opposite would mean a different valuation, or providing different levels of protection of, in fact, equal rights of every individual. For these reasons, it is not allowed the right of freedom of expression to be realized in such a way that would be an attack on private life, reputation and dignity of another.

The Constitution of RM in the provision of Art. 25, guarantees the respect and protection for the privacy of the personal and family life, the dignity and the reputation of every citizen. At the same time, constitutional provisions provide protection for the freedom and inviolability of correspondence and other forms of communication.24 However, we can conclude that in the conflict with freedom of expression, privacy is protected in a wider scale, despite the reputation and honor of individuals, which are an inseparable part of his personality. There can be no real human interpersonal relations, harmonious and stable social life, without consideration of the human personality and its values! Hence, comes the special meaning of offences against honor and reputation. Hence, comes the special meaning of offences against honor and reputation. Indeed, given the level of legal punishment, these crimes are among the so-called bagatelle crime, set at the lower limit

[23]Countries often, are trying to restrict the access to media, because of opposition views and / or content that can pose a serious threat to national policies (as well as religious or moral grounds). Given the fact that there has been a real abundance of websites, offering racist and xenophobic material, and especially, child pornography.
[24]Tues Amendment XIX, "Official Gazette" no. 107/05

of improper criminal, but on the other hand, taking into account their social importance, it is evident that they are listed very high, which gives them the right to circumvent the current requirements moving towards decriminalization, for what they've been very often exposed to harsh criticism.

Group object of protection of offences contained in Chapter XVII of the Criminal Code, is honor and reputation. The Criminal law, here stands on slippery ground, facing the difficulties that arise in determining the conceptual determination of these terms, especially in terms of honor as one of the most sensitive and most difficult to determine (but as well one of least protected) legal goods.25 Contrary to the term of honor that appears as a basic concept, there is general agreement that, the term of reputation derives out of it and has a secondary meaning (certain human values that are acquired with man's work, behavior, etc.)..

2. Specific terms and conditions of accountability for acts of defamation and insult in the national criminal legislation

According to the rules that apply in national criminal law for offenses committed through a newspaper or other periodical printed publication, by radio, television or film magazines, the Editor is responsible, or the person that replaced him at the time of publication of information in cases that meet the following assumptions:

- till the completion of the trial before the Court of First Instance author remained unknown;
- when information is released without the consent of the author and
- at the time of publication of information existed factual or legal obstacles to prosecute the author, that still remain.

The responsibility of the Editor or the person replacing him is excluded if he was not aware of the aforementioned circumstances, of valid reasons.[26] The responsibility of the Editor or the person replacing him is excluded if he was not aware of the aforementioned circumstances, of valid reasons. In cases where the mentioned circumstances exist, the legal solutions provide criminal liability for the publisher and the printer manufacturer, following this direction:

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[25]. There are different and mutually conflicting theoretical perspectives trying to give a certain contribution to the definition of mentioned term. Widespread is the normative point of honor as the entirety of all values of the human person, as an individual, as well as a social being. Consequently, everyone has the right to be treated so as to recognize his basic human values. For the existence of violation of honor is enough to be a devaluation of the basic human values in terms of normative definite honor. In this sense, the Criminal Code accepts the sense of personal violation of honor, but only as a circumstance relevant to criminal prosecution (prosecution for offenses against the person is undertaken upon private suit!). More details Tues Kambovski, Criminal Law - special section, Fourth edition, Skopje, 2003, pg. Etc.106.

[26]Article.26 of CCM.

- the publisher is responsible for an offense committed by non periodic printed publication, if there is no publisher or if there are factual or legal obstacles to his prosecution – the printer manufacturer who knew about it and
- manufacturer when it comes to offense committed by gramophone records, tapes, film for public and private display, reversal films, phonograms, video means, auditory means or similar means of communication, intended for a wider circle of people.

If the publisher, the printer or the manufacturer is a legal entity or state authority, criminally responsible is person who is responsible for publishing, printing or manufacturing.[27]

Legal provisions, inter alia, provide that in cases where it is an offense that was committed in the media that is published, printed, produced or broadcast abroad, and is shared across the country, criminally responsible is the importer or distributor of the means, if the legal conditions are provided. If, however, the importer or distributor is a legal entity or a state authority, criminally responsible is the responsible or the official person of the legal entity or of the state agency.[28]

3. Defamation and insult in the systematics of the special section of the Criminal Code of the Republic of Macedonia

3.1 Defamation

The essence of the offence defamation (p. 1) consists in inserting the world of reality, some false facts that cast a bad light on another. Such facts, once spread are very hard to deny, since there is an apparent difficulty to get to their source. Important feature of this incrimination is the affirmation of the presumption of honest citizen, thus with the incrimination of bringing false allegations or conveying false claims about others, if they are proved to be accurate, it means that they've ousted the presumption.

The action execution is alternatively determined and may consist in releasing or conveying something false. It can be done orally, in writing, with gestures (one person shows with a gesture to another person like he is stealing), with cartoon, images, technical recording and so on.

While the defamation can consist only in releasing or conveying something from the present or past, it can not consist in the predicting future events (facts), since in this case

[27] Article 27 of CCM.
[28] Article 27 of CC.

it is expression of an opinion, own judgment about something. The facts that make the content of the claim should be specified, i.e., the claim should be addressed to a specific, determined or possible to be determined event, so that his truthfulness can be checked and then it can be denied. It is not necessary the claim to contain all the details of the event that is subject of the contention, action, condition, etc... Finally, the claim has to be serious, i.e. such as not allowing fast conclusions whether the facts in the claim do or do not exist.

The legal essence of the offence consists of two major components: falseness of the claim, stated claim is harmful to the reputation and honor of another29 and the statement to be passed on to a third person. In that sense, there is defamation in cases when the content of the statement, that is released or conveyed contains false, i.e. refers to facts that in reality do not exist. Despite the facts, value judgments concern the results of the subjective conclusion of one person (the offender) about another, for his certain properties, relations and so on, although the boundary between the factual claims and expression of judgments is not so strongly determined. There can be no defamation if someone else tells you are an idiot, expressing social negative judgment about you. Regarding the authenticity or falseness of what is being released or conveyed, we should be aware of legal decisions in which it is stated that the offender won't be punished for defamation (he can however, be responsible for insulting or belittling by transfer of a crime, art. 173 and 175) if he proves the veracity of his claim or proves that he had reasonable ground to believe in the verity of what or was saying (p.3).

The next important element stems from the requirement under which the offender's statement necessarily should be made in front of a third person (or public), that understands it, or to be contained in a document intended to serve as evidence in legal or other relationships of the damaged party. If the statement is given only to the person addressed ("four eyes" with the victim), then it is an insult: there isn't opportunity for a third person to find out about the false statement. As regards the subjective side of the offence, it's not necessarily the offender to have intention to defame another, it is enough for him to be aware that in front of a third person he is releasing or conveying lies that are harmful to the honor or reputation of another, and whether he wants it or agrees with it.

With the Law Amending the Criminal Code of 2006, public defamation, or the execution of the offence through newspapers, radio, television or other media or at a public gathering, which was previously treated as a qualified form of the primary offense for what there was prescribed fine or imprisonment up to one year, was removed from the text of the law. According to these solutions, the Macedonian penal legislation now provides only one qualified form of defamation offense, and that is when the things that the offender what is released or conveyed are of such significance that led to severe consequences

[29] The statement is eligible to harm the honor and the reputation if it contains pejorative claims that affect certain values of the injured person, his reputation, the respect he has in a particular environment and so on.

for human life and health of the damaged person or a person close to him (p. 2). As a particularly problematic appears to be the determination of causal relationship, given that as a reason for such consequence can appear the psychological factor of personal hurt that may have different individual effect.[30]

3.2 Insult

a) The law contains no definition of the offense, according to Art. 173 for insult is punished the one that offends another (tautological provision).

From a legal and ethical aspects, by offense we mean a judgment for other person with a negative value , a statement or a procedure that according to the understanding of the public expresses humiliation of another, or violation of his honor and reputation, disrespect, contempt, curse, dishonesty, irony or other negative judgment expressed in the statement or otherwise.

The judgment about whether the statement or other action contains humiliation is objective and does not depend on the personal evaluation of the perpetrator. Such a statement or action should reach the knowledge of any person and to be pointed at a certain person. Regarding the action execution, the forms of expressions of humiliation may be different, so insult occurs in several forms:

- ***Verbal insult***, expressed by voice, words or written words, consists of releasing a voice, articulate or inarticulate (shouting, whistles, imitating animal, curses, etc..) or expressing something pejorative, disparaging in writing;
- ***Symbolic insult,*** made with a gesture or a sign; an act of performance is any sign or gesture that symbolizes something, contains hidden or open disrespectful symbolism to another (pointing horns - "Cuckold", displaying pejorative picture, cartoon, etc...)
- ***Real insult***, with action on the body of another (also pushing, pouring water, pulling the ears and other pejorative actions).[31]

Thus, it is important to note that unlike defamation, the insult may consist in bringing out even true facts or true negative judgments about other person. There is an insult, for example, when for someone else is being said that he is ugly, liar or cheater, and he is indeed! The court should not engage in the verity of what is claimed, said and so on, since the truthfulness of the statement of the perpetrator is legally irrelevant fact.

[30]Kambovski, Comment on the Criminal Code of the Republic, 2011, pg. 96.
[31] Kambovski, 2011, pg. 119 etc.

In terms of subjective side of the offence, the insult is attributable to intentional act. The intent of the perpetrator (intent to insult and so on.) is not counted among the constituent features of the subjective essence of the offense.

b) Special offence insult on discriminatory basis (pg. 2)

The severe form of the offence - performing an insult by the computer system contains some specifics that differ it from the primary offense. At issue are the following elements: public display of disdain, which includes one or more offensive statements and other acts of humiliation, by means of a computer system (computer offense); and motivation of the presentation of a disdain with the special relationship to the victim's belonging to a group which varies according to race, color, origin or national affiliation or ethnical origin, or towards the group of people characterized by some of those attributes.

For the existence of the mentioned form of the offence, as a kind of a form of "hate speech", xenophobia and discrimination, must be cumulatively met all the special conditions of the general crime offense, and to be determined the cause - effect relationship between the public display of disdain and the belonging of the victim to a certain group, or characteristics of the group (discrimination).[32]

3.3 System of criminal sanctions

a) Reform of the system of sanctions for the mentioned offenses

In the past period, the Macedonian criminal law faced several reform processes that have their own implications for the system of penalties for offenses against honor and reputation. The main feature of the changes is the abolition of imprisonment for defamation (i.e. the basic form of the offence of pg. 1), and accordingly, the fine appears as a single sentence that can be imposed on the offender.[33]

Since the adoption of the Criminal Code of the Republic of Macedonia in 1996, the text of the provision of Art.172 was modified in several occasions. However, the most important interventions were undertaken in the Novel of CCM in 2006, whose implementation meant essential involvement in the text of the established solutions regulating this matter.[42] This

[32] Kambovski, 2011, pg. 99.
[33] It is worth while to note that in the period when according the decisions provided under the Criminal Code, the journalists could have been punished by imprisonment; the same punishment found application only in one case, i.e. one journalist was sentenced to jail!
[42] However, since the adoption of the Criminal Code of RM, the text of the provision of Art.172 was modified several times. The 1999 amendments to the Law are moving in the direction of determining the minimum amount of the fine that can be imposed on the offender (Official Gazette of RM no.80/1999), while, five years later that the Law on amending the CCM of 2004, removed it from the text of the legal provision. Also CCM Novel of 2009 did not bypass the legal construction of these offences. In this regard, there have been some "adjustments" of these offences, i.e. was

way, the Macedonian legislator approached to the solutions inaugurated in most modern legislations, that starting from the nature of these offences, determine for a milder treatment, limiting the repertoire of sanctions to a fine. The use of imprisonment remains (in the span of three months to three years) in those cases where the offense resulted in serious consequences for the life and health of the damaged person or a close person to him (pg. 2).

In terms of the offense insult, also, were taken appropriate corrections, especially with the amendments to the Criminal Code of 2006 Year. More specifically, the sentence for the basic shape of the offence of pg.1 was removed from the text of the legal provision; its application is reserved only for those cases where will be determined the existence of serious consequences; also the paragraph 2 was deleted, which previously sanctioned the public insult or offense through press, radio, television, other media or at a public gathering, that was previously defined as a qualified form of the primary offence.

Finally, the 2009 Novel finished the appropriate specifying of the legal formulation, so the text reads this way: "A person who publicly exposes other person to a ridicule by the computer system because of his association with a group distinguished by race, color, national affiliation or ethnic origin, or exposes to ridicule the group of people characterized by some of those features will be punished by fine or imprisonment up to one year."

b) Imposing a court reprimand

A court reprimand can be imposed for crimes for which there is provided sentence to one year imprisonment or a fine, and were committed under such mitigating circumstances that make them particularly easy. Unlike in principle accepted solution, for certain offenses and under conditions provided by law, court reprimand may be imposed in those cases with offences sentenced to three years.

At the same line is the provision of Art. 177 CCM, in which the legislator has envisaged the possibility of imposing a court reprimand for the offender from Art.172 (including the other offences contained in this chapter) whereby clearly set out, the conditions of which depends the application of this measure: indecent or abusive treatment by the victim with which the perpetrator of the offence was challenged and took such action (caused offense). If, however, the victim responded with insult, the court may impose fines or reprimands for one or for both sides.

approached to precision of the offence of pg. 2: the benchmark "severe consequences for the victim" was expanded as follows: "severe consequences for human life and health of the victim or a close person."

c) Discharge from penalty

The Criminal Code provides possibility for discharge from punishment of the offender, if he apologized to the damaged party in front of the court in cases when it comes to offences of Art. 172 pg.1, Art.173 pg.1 etc; but in cases of defamation, the basic form of the offence of pg.1, it is necessary to complete an additional requirement: revocation of the statement in the presence of the court (Article 177 pg. 3).

CHAPTER III

ANALYSIS OF THE RESULTS OF MONITORING THE PROSECUTION OF JOURNALISTS BEFORE THE DOMESTIC COURTS OF THE REPUBLIC OF MACEDONIA

1. *Some general information about the monitored cases*

1.1 Time period in which the monitoring was conducted

The data analysis for the criminal cases concerning defamation and insult when as accused appears journalist or executive editor, including other people (freelance, presenter, manager, legal entity) covers the period from October, 2010 to July, 2011. Within the set time frames, were observed 77 cases related to these offenses taking into account the pre-specified range of perpetrators.

What can be noted indicates to the fact that in the majority of the cases, the criminal proceeding has been initiated before the start of the Monitoring process, so most of them were previously processed, and unfortunately the statistical indicators confirm that the cases that have received judicial finish during the mentioned time interval, have incomparably smaller share compared to other the rest of the cases.

The reasons for this situation are explained in detail using statistical processing of data obtained from the questionnaires and their comprehensive analysis.

1.2 Jurisdiction of the courts for offences committed through the press, cases registered by region

The regular local jurisdiction is determined according to the place of execution of the offense (forum delicti commissi). This stems from the text of legal provisions that contain the following wording: “according to the rule, locally authorized is the court in whose area the criminal offense has been committed or attempted."

In case when a crime is committed through the press, responsible is the court in whose territory the writings are printed. If this place is unknown or the writings are printed abroad, the court in whose area the writings are shared is responsible. If according the law responsible is the script compiler, a competent court is the court in the place where the compiler has a residence, or the court where the event mentioned in the writings took place. This applies in cases when the writing or the statement is published through radio, television or Internet.

According to the legal provisions which regulate the jurisdiction of the courts in domestic criminal - procedural law, and based on written notices received from the presidents of 23 courts, during the project a total of 166 cases were identified, out of which the most are processed before the Basic Court Skopje I - 148 registered active cases. It should be noted that only some of them were monitored due to their extent, and the need for effective monitoring and further analysis of the observed cases.

In this direction, within the set timelines October, 2010 - July 2011, total of 350 hearings were monitored before following four basic courts: Basic Court Skopje I Skopje, Basic Court in Tetovo, in Bitola and in Kumanovo. From the data obtained, we can conclude the following:

- before the Basic Court Skopje I Skopje there are 10 pending cases of offenses defamation and insult for which the procedure was initiated;
- 12 cases for which the procedure has began in 2008 are registered;
- 30 cases are pending from 2009, while
- in 2010 criminal proceedings have been initiated for even 96 cases;
- before the Basic Court in Bitola initiated is 1 criminal proceeding against journalist accused of defamation;
- 4 cases of defamation and insult against journalists were recorded before the Basic court in Tetovo and
- in the Basic Court in Kumanovo 1 criminal proceeding against journalist is led.

Graphic display of the number of monitored criminal cases for defamation and insult in terms of their regional participation:

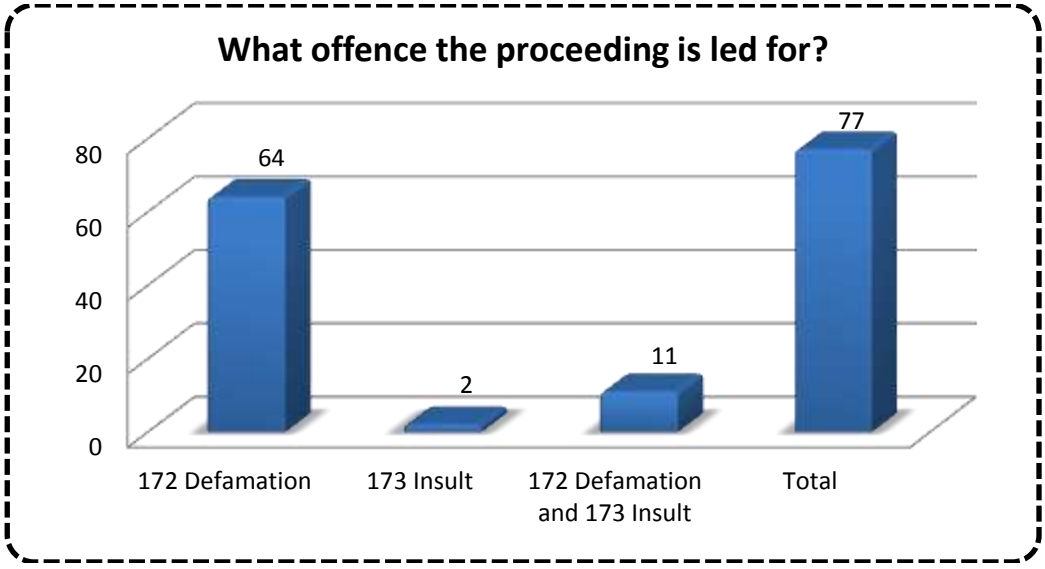
Basic court	2007 year	2008 year	2009 year	2010 year
Skopje I Skopje	10	12	30	96
Bitola				1
Tetovo				4
Kumanovo				1

1.3 Percentage share of offenses defamation and insult

From the total of 165 identified cases during the implementation, 77cases were observed where as defendants appeared 120 persons. The monitoring teams visited 350 hearings before the Basic Court Skopje I Skopje, the Basic Court in Kumanovo, Tetovo and Bitola. After the statistical processing and analysis of the data, we can conclude the following:

- the largest percentage of monitored cases accounted for the crime of defamation under Art.172, where 64 of the monitored cases are related to it, or approximately 83.1%;
- the offense insult occurred only in 2 cases (2.6%);
- percentage share of cases for which proceedings for offenses defamation and insult is 14, 3% and 11 cases are related to the aforementioned offences;34

Statistical display indisputably, confirms the fact that during the monitored period, the offense defamation has an absolute domination in the judiciary. If you make a comparison with the results of 2006 survey, can be noted also, the higher percentage of the criminal defamation. Namely, out of the total number of monitored cases (27), 19 journalists and 3 executive editors were charged with defamation, while only 1 journalist was charged with the offense insult.



[34]It is important to note that for a number of monitored cases, there is no data for which offence are led, so the percentage ratio can be different.

1.4 Some specifics regarding the cases of the offenses defamation and insult in the analyzed time period

a) Criminal liability of legal entities for offences defamation and insult

The basic legislative solutions to the criminal liability of legal entities are implemented in Criminal Code of the Republic of Macedonia with the Novella of 2004. Thus, our criminal law has moved towards modern legislations where there is a long time solution based on the conception according to which subjects of criminal liability for a particular category of crimes besides individuals, can be legal entities as well (societas delinquere potest).

In the Special section of the Criminal Code there are provisions which provide parallel liability of the individual and the legal entities, and lately their number occupies the larger scale!

We are not going to speak about the reasons that point at their (un) justification, but we will simply try to conceive one more enclosure that issue briefly stated, the dilemma comes down to whether it would be justified this type of responsibility to extend over the media? Namely, whether the media as legal entities can be criminally responsible?

The journalist primarily is an individual person. However, the information keeper that has received it from the source can be not only the journalist as an individual, but also the legal entity (thus TV stations, printed media, editorial boards, news agencies, etc.)[43]

And while the system of sanctions designated for legal entities until the entry into force of the Law Amending the Criminal Code of 2009, was limited to fine, ban on performing certain activities (temporary or permanent) and termination of the legal entity, the reform process in the mentioned period led to essential changes in these frames. In other words, the Novell of 2009, put focus on minor penalties imposed on legal entities (art. 96 - b) and simultaneously performed changes in the specific part of CCM - extended list of incriminations which stipulate legal responsibility of the legal entity.[44]

As minor penalties the Law provides the following:

1. prohibition to get permit, license, concession, authorization or other right established by special law;

[43]Tupancevski, Kirprijanovska, Medarski 2009, pg. 26.

[44] The amendments to the Criminal Code of 2009, inter alia, were undertaken appropriate measures in the text of the existing legal provisions in a way that clarified that the legal entity is responsible for all forms of the offence provided in the text of the relevant provision, not just for the basic shape of the it, starting from the attempts to overcome the legal ambiguities as well as the incorrect interpretation of legal solutions and in order to facilitate their application in practice.

2. prohibition of participation in procedures for public announcement, awards of public supply contracts and public - private partnership;
3. ban on establishment of new legal entities;
4. prohibition of using subventions and other favorable loans;
5. ban on use of funds to finance political parties from the budget of the Republic of Macedonia;
6. revocation of permit, license, concession, authorization or other right established by special law;
7. temporary prohibition of professional activity;
8. permanent prohibition of certain activities and
9. termination of the legal person.[35]

Even at the first glance one can see that the established system of sanctions does not look a bit scantily, but whether they seem appropriate in relation to the media that on the one hand, indeed, can pose a serious threat to peaceful and undisturbed enjoyment of some core values (individual and social), but also can attack on the principle that guarantees freedom and independence of the media? That is why some authors defend the thesis that "the effects of any kind of their official obstruction or limitation would be disastrous."

Considering the tendency for clarification of these and other numerous dilemmas interwoven in this area during implementation of the project there was one roundtable on "Criminal responsibility in the crimes defamation and insult with special review to the liability of the legal entities" in which prominent experts, eminent judges and lawyers, including representatives from the Association of Journalists of the Republic of Macedonia participated.

Arguments were presented at the discussion and conclusions that it had brought, once again, confirmed the obvious disappointment of journalists in terms of the manner of court proceedings and in particular, high fines in cases where the procedure is done by passing the conviction that for can lead to direct consequence extinguishing of some medium. In this context, again, was pointed out to the need that requires abandoning the previous approach and opening a serious debate that will result in taking appropriate legislative and other measures for the decriminalization of offenses defamation and insult generally (i.e. not only in terms of legal entities) and will develop mediation practice, so these cases will be argued in the Council of Honor of the Association of Journalists. It worth to however, mention the views of those journalists who resist such efforts, noting that given the current state of the home grounds, such decisions may come into collision with another, no less important rights: the right to respect the private and family life, reputation and dignity!

[35] Art.96 –b CCM.

In any case, exposed views and theses do not stand on line to find an effective answer to the question of responsibility of the media as legal entities. The need for further discussion on this issue remains till rational and durable solutions are offered that would help to overcome many of the problems in the judicial practice.

If we follow the results of the survey, it's shown that criminal cases against legal entities for offences defamation and / or insult, according to available data accounted for 7,50%, i.e. can be seen in a total of 9 of the monitored cases.

2. Initiation and duration of the criminal proceedings

The Novel of CCM of 2004 (in force since 07.04.2004) introduced significant changes in relation to offenses defamation and insult regarding the conditions for their processing. According to the existing solutions, a person who considers that has suffered defamation or insult offense may file a private lawsuit within the set time limits - three months from the date when he learned of the crime and its perpetrator (cumulative conditions). And then when the right of private lawsuit action shifts to relatives (in case of his death), the deadline for its submission is three months, when this period is reckoned from the date of death of the victim. Thus positioned, the legal time limit may be exceeded only in one case: in case of a private lawsuit filed for the offense insult, where the defendant until the completion of the trial and after the legally prescribed time limit raised a complaint against the plaintiff who had responded to his offense (counterclaim), thus the court adopts a single decision.[36]

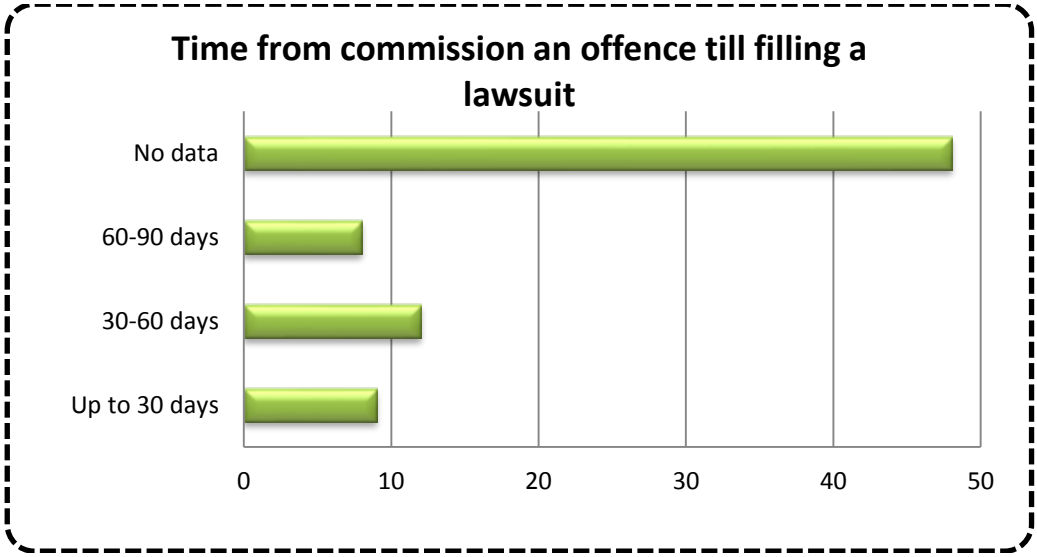
2.1 What is the time interval elapsed from the time from committing the offense till filing the private lawsuit?

Regarding the question of what time interval elapsed from the time of committing the offense until filing a private lawsuit, the statistical processing of the data suggests that the average period is approximately 48 days.

Such cases can be found in which the lawsuit was filed in a shorter period than10 days (in one of the objects monitored, the plaintiff brought suit within 2 days once grasped the offense and the offender, and in another case, a private lawsuit was filed within 4 days, while the in third, the plaintiff had taken such actions within one week). Only in one single case, a private complaint was filed within 90 days.37

[36] Art. 48 pg. CPC 2, Fig. Gazette of RM, No. бр. 5/1997; 44/2002; 74/2004; 83/2008; 67/2009 и 51/2011

[37]When considering the presented data, you should keep in mind that for some of the cases there are no data regarding the time period that elapsed from the commission of an offense by filing a private lawsuit.



2.2 What is the profile of the private plaintiff?

The next question concerns the profile of the private plaintiff. Starting from the data contained in the monitoring questionnaires that were the main instrument in the framework of our research, we got sure indicators that in each of the monitored cases, the role of the private plaintiff for these offenses is "strictly reserved" for public officials. Thus, once again confirms the thesis that public figures often find themselves as most exposed to criticism through the media and particularly "vulnerable" on it. But this, from on other side, questions the established concept that should apply in any democratic society in which states the claim that persons involved in political and / or in the public life of the country are susceptible to a wider public debate. This view point is confirmed in the jurisprudence of the European Court in Strasbourg which goes from the basic idea of freedom to expression as a central pillar of the processes of democracy; according the Court, public figures must expect to be subjected and must accept even stronger tones and stronger criticism of their account, thus to show a higher degree of tolerance.

It seems that the clearest and most explicit court decision which determines the scope of freedom of expression and which is directly related to our question is the one by the European Court of Human Rights in the case of Lingens v. Austria, which says: "... Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders...." the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual."[38] и [39]

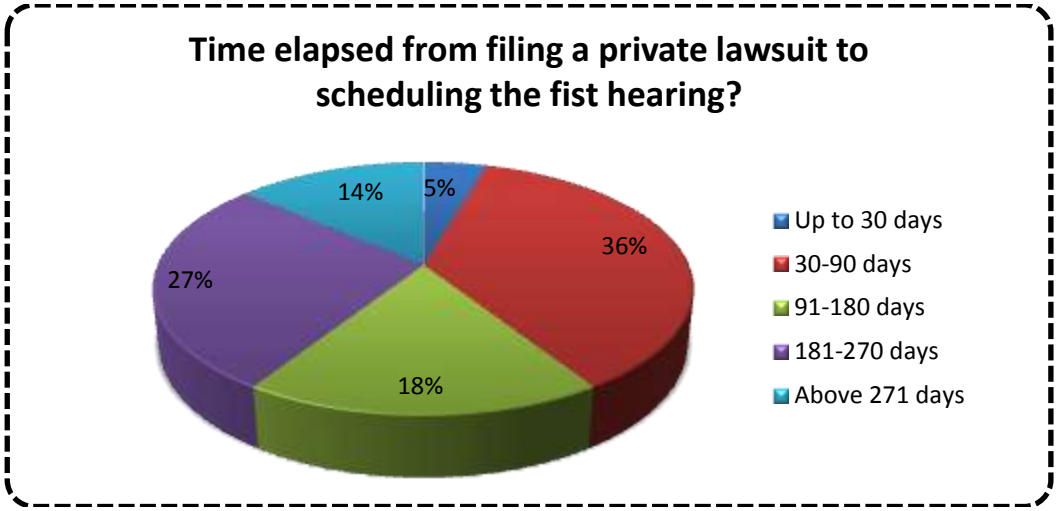
[38] Lingens v. Austria, 8. 07. 1986, Series A No. 9815/82

[39] In the case of Bladet Tromso and Stensaas v. Norway in the view of the Court, the limits of the expression of journalistic freedom are set by the public interest in one democratic society, where the media's role of "public watchdog"

2.3 Time period from the submission of the private lawsuit until the scheduling of the first hearing

For a long time, the poor efficiency of the system of criminal justice has been a subject of debate in the scientific and professional public. This is confirmed by the results of the research referring to the time period from filing a private lawsuit till the scheduling of the first session, and consequently the long duration of these proceedings.

Regarding the first question, the statistical processing of the data provided shows that within the monitored cases, this time period on average is 145 days. What worries even more is that in practice, still can be found such cases in which the waiting time exceeds 300 days. According to data available to the Coalition, in one of the monitored cases the hearing was scheduled after 340 days elapsed from filing the private lawsuit. In another case, the time elapsed from the filing of the complaint was 313 days and 300 days in a third one. Three cases were registered in which the time interval is set at 200 days, in one of them, the hearing was scheduled after the expiration of 229 days. Also were registered and such cases where this period is 57 days (2 cases) or 70 days (also 2 cases).



The presented data once again confirm the notion that the slow handling and scheduling of hearings is an evident problem in the domestic jurisprudence, therefore, not coincidentally, recently there were attempts for inauguration of new procedural solutions that would enable to overcome the detected problems. In addition to that are the provisions of the Criminal Procedure which regulate the procedure for reaching a verdict without trial (penalty order as special form of simplified procedure) that was first introduced by the amendments of 2004. The new LCP, however, pays attention to

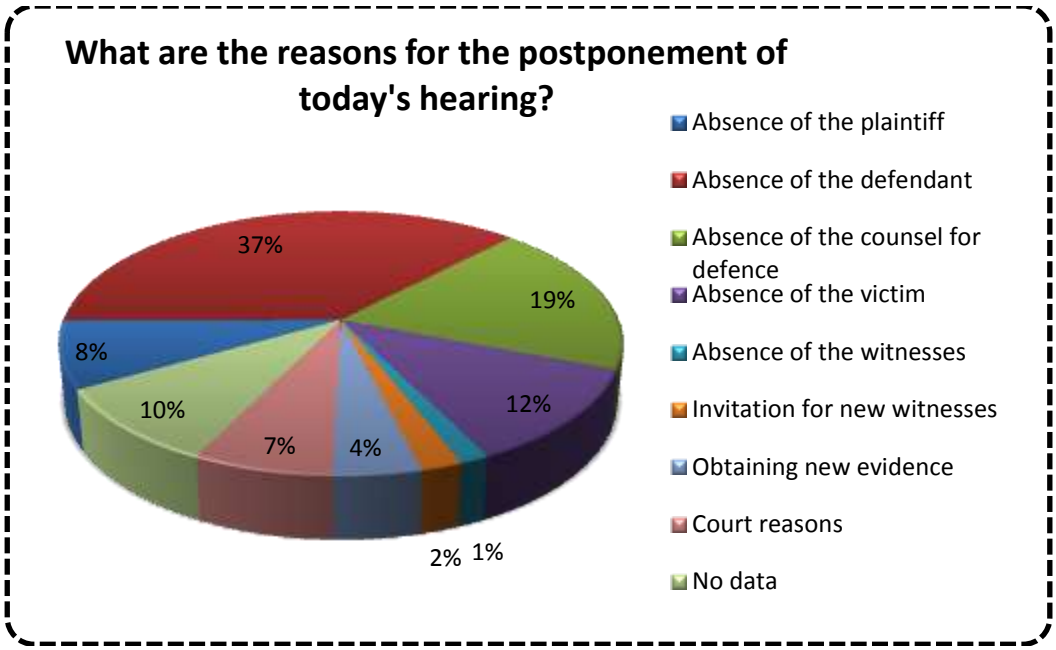
must not be lost in situations of revealing information of public interest, BladetTromsoandStensaas v. Norway, 20.05. 1999, No. 21980/93

mediation procedure as one of the possible forms of acceleration of the procedure (more details Tues texts below).

2.4 Other factors affecting the length of proceedings

The frequent delay of trials is an important factor that influences the delay of the proceedings and that puts question mark on the consistent fair trial standards within a reasonable time. The results of the monitoring point to the fact that the excessive length of judicial proceedings due to the frequent postponement of scheduled hearings is a regular occurrence in the domestic jurisprudence.

Namely it is the same phenomenon that has long been rooted in the domestic criminal system, and appears referring the offenses which are analyzed in the framework of our monitoring. The statistical indicators point to the following reasons for the postponement of the hearings:



Summary analysis shows that the absence of the accused as the cause of delay has the highest share in the total picture – even 106 of total 350 monitored hearings were adjourned because the defendant did not attend the scheduled hearing.

According to the legal provisions applicable to the shortened procedure, if the defendant does not attend the hearing, although duly summoned or the invitation could not be handed over due to not reporting to the court, change of address or residence, the court may decide the trial to be held in his absence, in case that his presence is not

necessarily required.40 Indeed, this solution is aimed at speeding up proceedings, but presented data testify that the trials, are often delayed because of the absence of the defendant, including the other stakeholders in the process (so, the private plaintiff, the damaged).

Processing the gathered data argues that within all 350 monitored hearings (or 77cases) in respect of offenses defamation and insult, the presence of the defendants was provided with an invitation. There was no case with involuntary detention.

Relevant to our topic are data that indicate how big is the share of criminal cases in which the main reason for the postponement of the hearing can be attributed to the absence of the private plaintiff. Since his presence also represents one of the conditions for the main hearing to be held. Legislation, however, provides the opportunity the trial to take place even when is not attended by the private plaintiff, if he has a residence outside of the court's jurisdiction where the private suit is filed, or if he filed a proposal the trial to be held in his absence.[41]

The analysis shows that 29 of total 350 monitored hearings in the analysis were delayed due to the mentioned reasons, which is incomparably less than the ones delayed due to the absence of the defendant.

In 13 monitored cases, the hearing was postponed due to the absence of the counsel for defense, while the delay occurred due to existence of certain court reasons (computer system failure, selection of the trial judge for a judge in another court, etc...) in 17 cases.

The absence of the damaged party appears in 8 cases, while delaying the hearing because of absence of witnesses summoned is listed as the last place – registered only 2 such cases.

2.5 Interruption of the trial

The dismiss means interruption of the trial in a shorter time, but not longer than 30 days. It can occur due to the existence of multiple and different circumstances (so, a brief rest during the trial when there is an opportunity for a short time to obtain some evidence, for the preparation of the prosecution or the defense, breach of the order of the trial by the counsel or the attorney even though he or she had previously been sentenced, so the client wants to take another attorney or representative, etc.)..

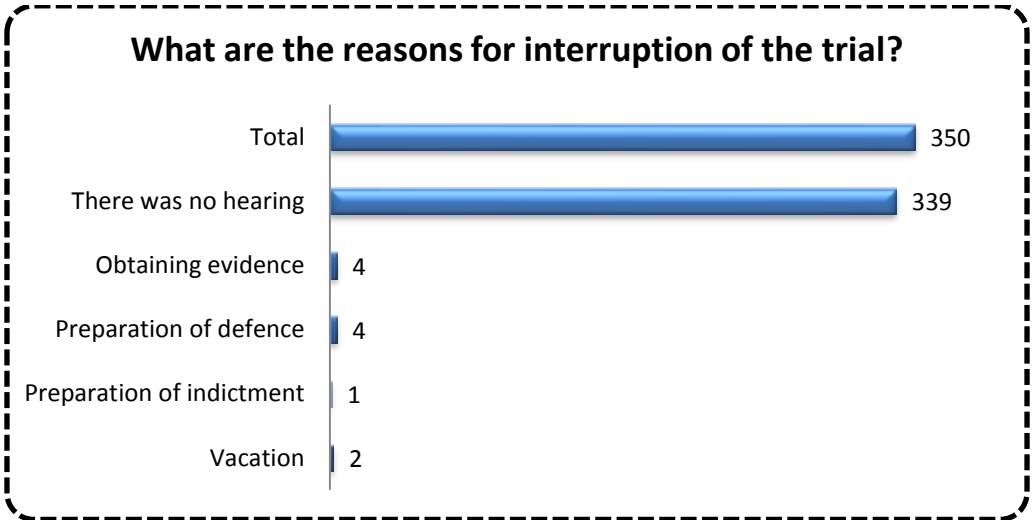
The provisions of the Law on Criminal Procedure that regulate the shortened procedure, inter alia, stipulate that the trial, in cases when it comes to fast-track procedure, begins

[40]Art.428 pg 4 of CCP.
[41] Art 428 pg. 3 of LCP.

with presentation of the contents of the prosecution proposal or the private lawsuit; the initiated trial will be completed if possible, without any interruptions.

Regarding the question about the situation in domestic jurisprudence, or whether and how often it comes to interruption of criminal proceedings for offenses defamation and insult, statistics we have shows the following:

1. The number of observed cases in which interruption occurred at the main hearing is 11 (or 3.1%)
2. The reasons for this can be attributed to the following circumstances:
    - Preparation of the defense (in 4 cases);
    - Obtaining new evidence (also in 4 cases);
    - Break (2 cases) and
    - Preparation of the indictment occurs as a reason for interruption of the trial in 1 of the monitored cases.



2.6 Instead of conclusion

To illustrate the claim that in our case law, excessive length of criminal proceedings for such offenses is almost a regular occurrence, we will indicate the data related to one of the cases monitored before the Basic Court Skopje I Skopje. In this particular case, the Coalition's monitoring team begun monitoring the criminal proceedings in 2007 for defamation offense, and still hasn't had a court finish.

Whether this is the way again, to confirm "skeptical treatment" by the judges when it comes to the aforementioned offenses given they are overload with cases for the severe offenses, remains an open question that still can not find the right answer.

At this point, it opens a dilemma whether the new forms to accelerate the criminal procedure incorporated in the text of the new Law on criminal procedure (and the procedure for mediation), can provide adequate output solutions?

3. *Sanctioning of journalists and executive editors accused of defamation and insult*

In previous presentation we referred briefly to the amendments to the Criminal Code regarding offenses defamation and insult, the interventions that have been taken regarding the legal forms of the offences, as well as the repertoire of sanctions provided for their perpetrators. With the Novella of the Criminal Code of 2006, the imprisonment of 6 months was removed from the text of the legal provision of Art. 172 pg. 1 where the basic form of defamation is incriminated.

Prison sentence (placed in the span of three months to three years) can be applied in those cases where the offender was presented or shared false facts and as a result of it, there was a severe impact on the appearance and health of the injured party or a close person.42

What is important for our subject matter covers the amount of the fine, especially if we take into account the provisions stated in the Criminal Code of the Republic of Macedonia with the Novella in 2004.

Striving to avoid the underlying weakness of the fine – it unequally affects the perpetrators of criminal offenses, depending on their financial situation, the efforts undertaken on legislative plan resulted in the adoption of a new model known as a fine system of daily fines. So, the determining the amount of the fine by applying the system of daily fines is reduced to a mathematical operation that looks like this: the maximum daily amount of fines (of up to 5, 000 Euros) is multiplied by 360 days, one year and we come to a fantastic figure of the first 1, 800, 000 Euros. If you use the same method to calculate the general legal minimum, the smallest value of daily fines - one Euro in denar counter value is multiplied with 360.

In the context of the aforementioned, the dissatisfaction of the journalist it is evident; they have converged on several occasions serious criticisms regarding the criminal proceedings and especially regarding the high fines.

If we take into account the data from the monitored period from January to November 2006, that show within the monitored cases were registered 3 cases that ended with imposing a fine, i.e. 1 criminal procedure was completed by the first instance decision and the journalist was sentenced fine of 10 daily fines (250 EUR equivalent) and 2

[42]Art.172 pg. 2 of CC.

proceedings against the executive editor of "Focus," initiated by private plaintiffs, whereby in the first case the fine imposed daily fines 150 (155th 158, 00) or imprisonment of up to six months if he did not pay the fine within 15 days. In the second case, was imposed a fine of 331, 560, 00 denars (360 daily fines of 15 Euros fine for each day) and imprisonment of up to six months if he did not pay the fine within 3 months.[43]

If the data thus obtained is compared with the data that is object of analysis within the framework of our research, we can conclude that in none of the monitored cases was imposed a fine to a journalist, and this practice, no less, is confirmed when as defendant appears the editor or other person (freelance, presenter, manager, legal entity etc.)..

CONCLUSIONS

- Data from the survey show that the in majority of cases the procedure is still ongoing, but on the other hand, we can not avoid the available knowledge that we have about 28 cases that received court epilogue till the end of July 2011. In none of these cases has been imposed a fine for acts of defamation and insult for the people who were surveyed;

- In practice it is confirmed the increasing weighing position on the impunity of journalists, and some movement toward modern trends that have found their basis in the legislative provisions contained in the new Law on Criminal Procedure;

- The results of the monitoring process provide us picture of the situation in judicial practice that is characterized by long duration of court proceedings in which journalists have been charged with criminal offenses, even when there were not enough legitimate reasons to delay the proceedings, as well as statistical indicators that confirm that in the judiciary slowly begins to create a favorable environment for the application of new procedural institutes, promoting the settlement out of court, etc..

- In addition to this thesis, indicate data showing that in 7 monitored cases, the procedure ended with the settlement of the parties; in 18 registered cases with some kind of apology offered to the damaged party, the apology was accepted in 4 of them; and in few cases – still ongoing, the judge adjourned the hearing because the attorney of the plaintiff informed him about the progress of out of courts settlement between the parties;

[43]The total amount of fines imposed both on the main editor of Focus is 486.718, 00 denars, more details in Defamation and insult in criminal proceedings against journalists, the Coalition "All for Fair Trials", Skopje, December 2006.

4. (Dis) respecting the fair trial standards

4.1 Trial within a reasonable time

Eminently fair trial has a place in a democratic society in terms of the provisions established by statute in the text of the European Convention on Human Rights. The said international document specifically provides guarantee the defendant to be tried within a reasonable duration of proceedings.

The right to be tried within a reasonable period stated in Art. 6 pg. 1 of the Convention, considered to be most comprehensive, most complex and most flexible, but at the same time and most exploited provision whose purpose is to provide a fair trial, having regard to the general provisions relating to criminal proceedings in accordance with the principle of trial within a reasonable period of time.

In this context, it is important to emphasize that reasonableness is assessed in each individual case and can not be assessed in abstracto, in principle and in general, but we must always take into account the specific circumstances of the case in light of the facts and the specific circumstances of the certain case.[44] Although the interval of reasonable time is not, nor can be fixed, however, it is a timeout which, at least, exceeds the limits specified in the national legislations of the states.

The European Court over during its judicial case - practice built certain management standards, easily visible through the analysis of its decisions. In this regard, especially important are the issues related to the determination of the beginning and the ending of the relevant period of duration of criminal proceedings before national courts and the criteria considered relevant, i.e. facts and observations on which the conclusion for reasonableness, i.e. the unreasonableness of the relevant period would be drawn .

At issue are the following several criteria:

- complexity of the case;
- conduct of the applicant;
- the conduct of the case proceeded by the competent national authorities and the damage that was inflicted on the applicant.[45]

[44]YBV, Xv. Belgium pg. 190, Tues broader Lazhetikj - Bužarovska, Assessment of trial within a reasonable timebefore the European Court of Human Rights, Yearbook of Law Faculty "Justinian I" in Skopje, Vol. 41, 2004/2005.
[45] *Ibid.*

4.2 What is the current situation in the domestic jurisprudence in relation to compliance with the standards of reasonable time?

a) One of the main tasks that are placed before the judge is to ensure legitimate and efficient justice. Legitimate in terms of properly determining the relevant facts, including adequate application of the rules of substantive law as well as procedural solutions. Efficiency means achieving legitimacy for such a short period of time in order the subjects seeking legal protection to get it as soon as possible. But very often the legality and justice fail to achieve their common unity. Increasingly, it seems that these two elementary principles are mutually exclusive.

Handling in accordance with the rules for trial within a reasonable time is an essential guarantee of legal security of every citizen.46 Legitimate and effective justice in its "complementary meaning" owns an essential legal and political value.[47]

b) And when we add all of if this that has been mentioned above to the results of the survey the fundamental question appears, whether and to what extent the positive Macedonian legislation respects the standards for a trial within a reasonable time?

Just a reminder, the amendments to the Law on Courts of 2008,[48] the scope of competences of the Supreme Court, inter alia, include the responsibility for deciding upon requests from clients and other participants in proceedings for infringement of reasonable time, procedure prescribed by law before the courts in the Republic of Macedonia in accordance with the rules and principles laid down by the European Convention on Human rights and Fundamental freedoms and starting from the jurisprudence of the European Court of Human rights.[49]

The party that believes that the authorized court has violated the right to trial within a reasonable time has the right to apply for protection of the right to trial within a reasonable time to the Supreme Court of the Republic of Macedonia. Further provisions of the Law determine the period, the contents of the said request, the handling and decision making by the court and the appealing in cases where the party is dissatisfied with the proceedings of the court's decision.[50]
Finally, if we review the data from the survey the following conclusions can be drawn:

- Considering the factors affecting the length of the court proceedings regarding the offenses defamation and insult, necessarily, we must indicate the poor

[46] Radolović, A., Zaštita prava na suđenje u razumnom roku, Zb. Prav. fak. Sveuč. Rij., 2008, V. 29,, No. 1, pg. 6.
[47] Also and Justiz – Recht – Staat, Wien, 2002, pg. 8.
[48] Fig. Gazette of RM no. 35/08
[49] Art. 35 pg. 5 of CL.
[50] Чл. 36, 36 – а и 36 – б од ЗС.

efficiency of the criminal justice system, which is confirmed through analysis of data obtained from the survey indicating that long period elapsed from the time when the private plaintiff has decided to launch a prosecution for violation of his rights (in this case, the reputation and honor) until the scheduling of the first court hearing;

- Unfortunately, we can still find such cases in which the waiting time from filing a private lawsuit for defamation and / or insult till the scheduling of the first hearing exceeds 300 days;
- Delays of trials as one of the important factors affecting the delay of the procedure, represent almost regular occurrence in domestic jurisprudence;
- Also, the interruption of the main hearing, especially in cases run with a simplified procedure, is found in some of the analyzed cases (in total 11 cases);
- In that regard, it is advisable to approach to serious thinking and creating favorable opportunities for the application of new criminal procedural decisions when it comes to offences defamation and insult taking primarily into account "the quality of criminal non law" when it comes to these offenses included in the category of bagatelle crime, as well as gradation requirements for non law;
- That, ultimately, should contribute to achieving the fundamental rights of the parties involved in the procedure, but also to influence the direction of unloading the courts with the so-called auxiliary tools.

4.3 The right to effective participation in the criminal proceeding

One of the elements that compose the concept of a fair trial (although not explicitly mentioned in Article 6 of the European Convention on Human Rights) is the defendant's right to effectively participate in the procedure initiated against him. The importance of ensuring the rights of the defense in criminal proceedings has been identified as a fundamental principle in a democratic society, so in that sense, Article 6 of the Convention must be interpreted in a way that will provide practical and effective implementation of the said rights, eliminating any danger which could reduce the level of theoretical and illusory ideas.51 States are expected to be cautious in ensuring the rights of the defense52 and taking any measures which would represent kind of restriction of these rights, application of these measures should be absolutely necessary.[53]

[51] B. Artico v. Italy, Series A No. 37, para. 33.

[52] Tues Colozza v. Italy, 12th 02. 1985, Series A, No. 89, para. 28; Hamer v. France, Vidi n.7, December 17, 1996 para. 28 where the Court found that the Frenchcomplaints system which puts the burden on the convicted person to learn when the specified period is starting to run , ie time of his discharge is not compatible with the degree of attention that states are obliged to practice to ensure effective exercise of rights guaranteed by Article 6 of ECHR.

[53] Tues Van Mechelen v. Netherlands, 23rd 04th 1997, RJD, 1997-III, para.58 - the case of anonymous witnesses. If it is enough less restrictive measure, then that measure should be applied, Kalajdziev, Elements of the concept of fair trial are not explicitly mentioned in Article 6 of the European Convention on Human Rights, Proceedings in honor of prof. Dr. Stefan Georgievski, Law Faculty "Justinian I", Skopje, 2010, pg. 695-711.

On several occasions the European Court of Human Rights has recognized the right of the accused to participate effectively in criminal proceedings.[65] This primarily involves the presence of the accused during the trial: „The notion "fair trial" implies that a person charged with a criminal offence should, as a general principle, be entitled to be present at the first instance trial i.e. during the proceeding led against him.“[54]

Therefore, the state has an obligation to take positive steps towards realization of the traditional right of the defendants. Timely notification of the defendant and his counsel for the trial hearing is one of the necessary steps to be taken having regarded the aspiration for the smooth achievement of basic standards.[55] The right to be present at trial the defendant may waive, but only if it is clearly and unambiguously. Remains, namely, the state authorities to demonstrate that absent defendant were aware of the procedure that was conducted against him and that appropriate steps to locate him have been taken.[56]

4.4 Presentation of evidence

Regarding the principle of equality of means, each of the parties must have a reasonable opportunity to present arguments and evidence under the conditions that will not put it in substantially unequal position against the opposing party. In criminal cases, collection and presentation of evidence is observed under the light of the guarantees referred in paragraph 2 and 3 of Article 6 (i.e. the presumption of innocence and the minimum standards of the rights of the accused).

In terms of presenting evidence at trial, the Strasbourg Court starts from standpoint that all the evidence against the accused should be presented in public court proceedings, with the possibility of adversarial hearing. Courts have an obligation to provide presentation of evidence with a fair and proper procedure.[69]

The results of the survey on the issue under consideration at this place show the following situation:

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[65] B. K. STARMER, European Human Rights Law, LAG, London, 1999, p. 266.

[54] Thus Ekbatani v. Sweden, No. 10563/83, 26.05.1988

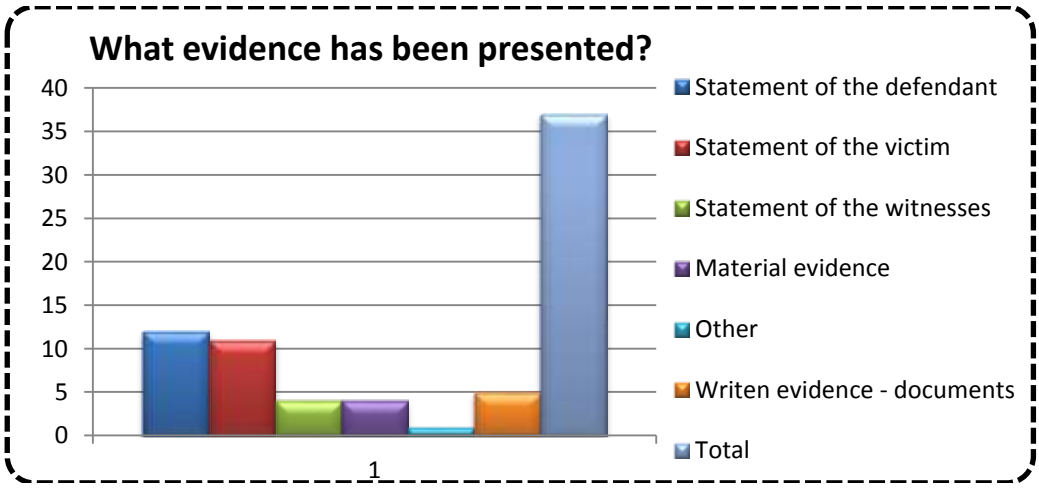
[55] It must not, however, lose sight of the fact that the right to attend the trial is not absolute. Thus, in the case: Ensslin and Others v. FR Germany, 1978, 14 DR, 64 defendants were unable to attend certain stages during the trial, because of the hunger strike and their health condition, cf.: Ensslin and Others v.FR Germany, 1978, 14 D.R., 64th The Commission emphasized that according toArt. 6 st. 3 (c), the trial can not be held without defense, to adequately present its arguments. However, it was established that "in the circumstances, the judge could only use the available means, ie to prevent interruption of the proceedings without, putting the defense at a disadvantage because defenders of the accused were present and practically had unlimited opportunities to establish contact with their clients, Kalajdziev, 2010, pg. 697-698.

[56] Colloza v. Italy, Judgment, 12.02.1985, Series A, No. 89, 7 EHRR, 516 according to Kajaldziev, 2010, pg. 697 – 698.

[69] Kalajdziev, 2010, 695 – 711.

- According to data available to the Coalition in relation to cases in which there was presentation of evidence, we have the result in 12 of the monitored cases there was the statement of the defendant;
- the testimony of the victim is found in 11 cases;
- statement of witnesses as among the most commonly used means of proof occurs in 4 cases;
- The presentation of material evidence to some extent, is located on the lower level (7 cases);
- to presentation of written evidence - documents was approached in a total of 5 of the monitored cases and
- The category other evidence is at the last place, i.e. their participation is only noticed in 1 case.

Given the above, it can be concluded that the testimony of the defendant still enjoys a central place in the court proceeding when it comes to offences defamation and insult when as accused persons appear journalists and editors. But, the defendant's statement given in the procedure can not be valued as a means of evidence, though; the data confirm that it represents an important source of data for the relevant legal facts in criminal proceedings!



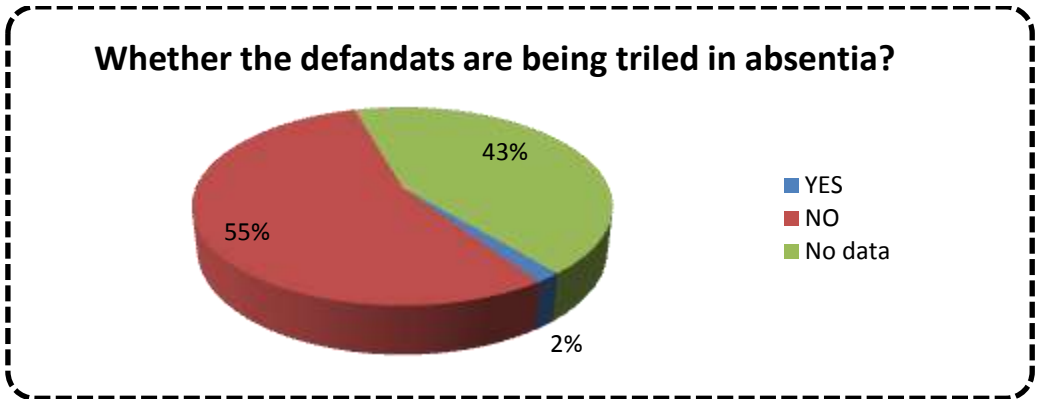
4.5 Trials in absentia

If certain safeguards are followed, the trial in absence will not be considered a violation of relevant provisions of the Convention. However, if the defendant subsequently appeared, he has the right to request the case to be re-examined.[57] In this sense, the European Court in Strasbourg has not approved the rule according to which, in Italy the

[57] B. K. STARMER, European Human Rights Law, LAG, London, 1999, 267.

new trial was limited to cases where the defendant could prove that his absence during the procedure is not an attempt to evade justice.[58] But even in those situations where the defendant chooses to be absent from the scheduled hearing, it is necessary to allow the presence of his counsel during the trial. The absence of the defendant does not deprive him of the fundamental right to (legal) representation by his counsel! [59]

From the data available to the Coalition, can be seen that only in two cases the accused was tried in absentia (or 1.7%). There are evident signs that in 66 monitored cases, i.e. 55% there was postponement of the hearing because there were no conditions for its maintenance regarding the presence of one of the parties, or in this case the accused person.



4.6 Cancellation of the private lawsuit

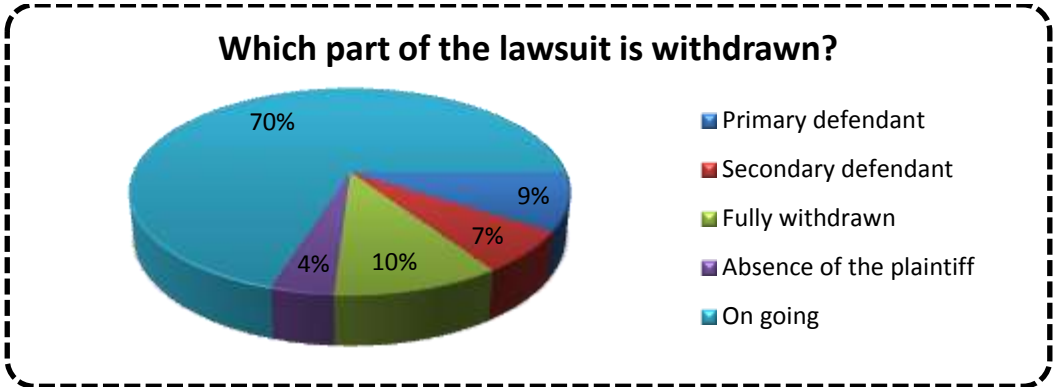
The stated provisions in the Law for Criminal Procedure provide several ways to cancel a private lawsuit filed by the plaintiff as follows:

- explicit - when the private complainant in writing or on record before the court that gives up his right to appeal, or
- silent - in cases where he does not attend the hearing, although he has been duly summoned or the invitation could not be handed over to him because of his no reporting the change of address or residence. In this case, it is assumed that he was indifferent to prosecute.[60]

From the collected data can be noted that the absence of private prosecutor appears as a reason for the "end" of the procedure in 3 of the total monitored cases. The cancelation of the lawsuit also has participation in this place and, therefore, the situation is as follows:

[58] B. Colloza v. Italy, Judgment, 12.02.1985, Series A, No. 89.
[59]B. Poitrimol v. France, 1993, 18 EHRR, 130.
[60] Art. 54 pg. 1 of the CPC; broader Tues Matovski Nikola, Lazhetikj – BužarovskaGordana, Kalajdziev Gordan, Criminal Procedural Law, 2009, Law Faculty "Justinian", Skopje, pg. 129

- in 7 cases the private lawsuit has been withdrawn when it comes to the primary defendant;
- the private prosecutor withdrew the complaint regarding the secondary defendant in 5 of the monitored cases that received a court finish and finally
- In 8 cases the complaint was fully withdrawn.



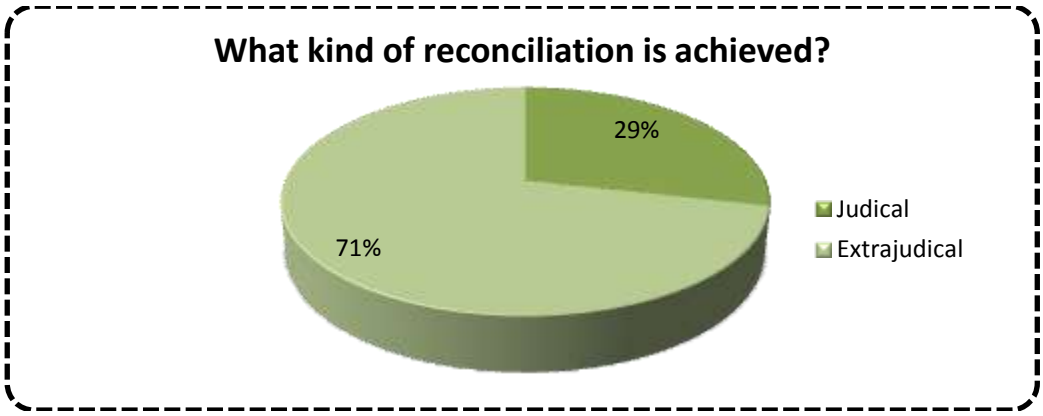
However, it is worth to note that in most of the cases the procedure is still ongoing because so we can not fully extract the relevant data in this direction.

a) Reconciliation of the parties

Before scheduling the trial for crimes under the authority of individual judge, prosecuted upon a private complaint, the individual judge can call only the private plaintiff and the defendant to come to court on a certain day in order to maintain reconciliation hearing. If the reconciliation is avoided of the parties as well as the withdrawal of the private lawsuit, the judge will take statements from the parties and urge them to put their proposals in terms of obtaining the evidence.[61]

In the context of the survey data, it should be noted that reconciliation between the parties has been achieved in 7 cases; in two cases there was court conciliation, while in the remaining 5 cases there was extrajudicial reconciliation.

[61] *Ibi, pg.*413.



What deserves special attention in this place, among other things, speaks in favor of new forms of treatment and non-judicial resolution of criminal cases. Her review was imposed with the solutions inaugurated the new CPC, whose main intention is rearranging the role of procedural entities, primarily the parties and the counsel in the proceedings, accepting the disposition of the will of the parties and counsel as a prerequisite for avoiding of classical criminal proceedings, streamlining and effectuation of criminal justice. Our subject touches mediation procedure as a method of mediation and reconciliation of the victim and the perpetrator of the offense; hence we need briefly to look at new solutions.

b) Mediation as a form of acceleration of the criminal procedure

In most states, mediation practice as a means of resolving conflict has noticed positive results. In France, mediation proves to be an effective method that leads to resolution of disputes in 70% of cases in which it had been applied. In the U.S. where there are no restrictions on its application in the case of minor crimes (misdemeanors) is applied in 69, 8%, and in severe criminal offenses (felonies) is used in 30.1%. In Germany even 86% of offenders have shown willingness to participate in mediation for reconciliation with the victim / victim.[62]

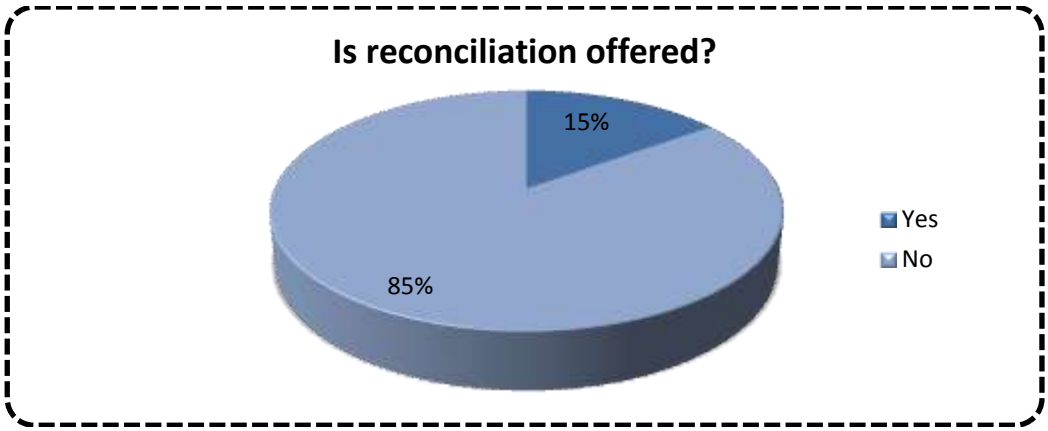
In national law, mediation procedure got its rightful place in the provisions inaugurated with the new Law on Criminal Procedure whose application is provided for criminal cases for which the Criminal Code envisages imprisonment of five years and that are prosecuted upon a private lawsuit and for which should be brief procedure whereby the result that mediation is actually an alternative to the shortened procedure.

It is arguable, however, whether and to what extent the "propensity toward litigation" which is usually present in the evident ignorance of the defenders in the process

[62]Bužarovska Gordana, Misoski Boban, Settlement and mediation, MRKPK, Year 16,no. 2, 2009, pg. 252 etc...

of mediation on issues that appeal to this problematic are ready to respond to such opportunities.

However, the data show that out of 18 cases in which the defendant offered apology to the injured party, it was accepted in 4 cases. It may also be noted that for some of the cases are still ongoing, the hearing was postponed because of court reporting that there is ongoing out - court settlement between the parties.



RECOMMENDATIONS

- Mediation as a tool for reconciliation between the parties can be an efficient solution when it is called bagatelle offenses which are prosecuted upon private suit.

- Relevant incriminations of Article 172 and Article 173 also are included in the set - provisions for which can be applied mediation practice in accordance with the new legislation.

- In this context, it seems appropriate, in the next period to approach to thinking seriously and taking measures that will enable successful application of mediation when it comes to offenses defamation and insult.

- This solution to a significant extent, may have multiple effects: on one hand, it will contribute to the relief of the judiciary when it comes to these crimes (especially given the rise of organized and high - tech crime which require taking serious efforts by the court in order to detect and punish the perpetrators of these acts) and on the other hand, its practice can produce a positive impact regarding the involved parties in the proceedings and its unnecessary delay.

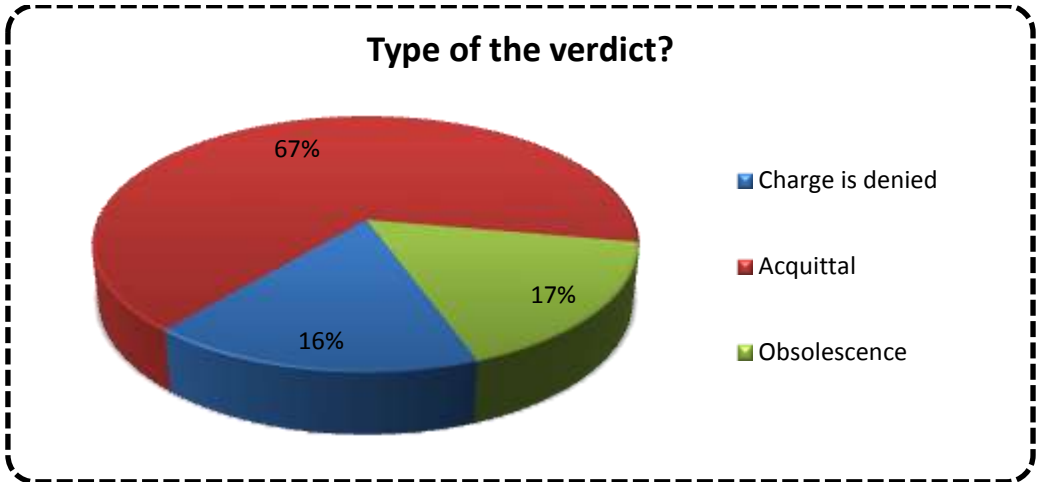
5. *Verdict; type of verdict and penalty policy*

Adjudication of a criminal dispute means deciding on all contentious issues, clarifying them and establishing the truth in accordance with the legal relevant facts. The verdict as a form of court decision that ends a (criminal) case, answers the question whether the accused committed the crime and is criminally responsible.

Since the criminal prosecution for defamation and insult is initiated based on private lawsuit against the defendants, for these offences there is short procedure in which the judge is obliged, after the conclusion of the trial immediately to pronounce the verdict and to publish the essential reasons. The verdict must be made in writing within eight days from the date of the announcement.[63]

What can be seen from the monitored cases directly refers to the fact that in 77 ases, verdict was reached only in 6 cases, including:

- conviction was not made in any of the monitored cases;
- four criminal proceedings are finished with acquittals
- decision that rejects the charges was made in two in 2 cases; in one of them, verdict for rejecting was rendered by failing to pursue criminal prosecution because of obsolescence (Article 107 of Criminal Code).[64]

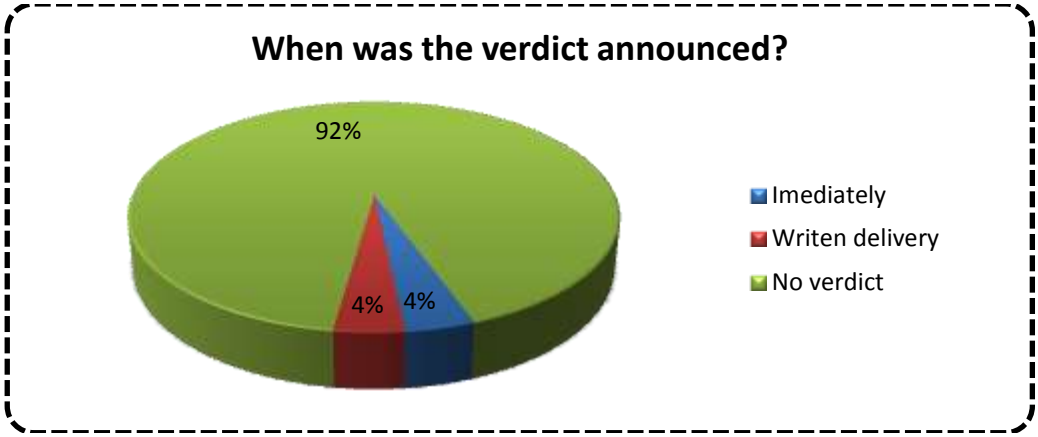


[63] Art. 429pg. 3 of CCP

[64]Obsolescence of the criminal prosecution is a flow of time after that can not be initiated or continued with the prosecution, and regarding the lapse of criminal prosecution, the court is responsible to take care ex officio.

Regarding the announcement of the verdict, we can conclude the following:

- In three cases the verdict is announced and immediately
- Within the remaining (three) cases the court assumed responsibility for written notice of the rendered verdict



CONCLUSIONS

- Seeking to avoid unnecessary repetition of previously stated conclusions, summary display showcasing at this place aims once again, clearly and precisely to indicate the problems detected during the observation of court proceedings related to offenses defamation and insult, as well as the so - called factors - barriers that affect the delay of the proceedings, the participation of the parties, and the other documented circumstances which seem relevant to our research.

- In the time period October 2010 - July 2011 total of 350 court hearings were monitored before the four basic courts as follows: Basic Court Skopje I Skopje, the Basic Court in Tetovo, Bitola and Kumanovo;

- Out of the total of 165 cases identified during the implementation, 77cases were monitored; where as defendants appeared 120 persons;

- After processing and statistical analysis of the data, we can conclude the following:

    - Largest percentage of monitored cases accounted for the crime of defamation under the Art. 172; 64 of the monitored cases or approximately 53, 3%;

- Crime offense insult occurred only in 2 cases (1.7%);
- Shared percentage of cases for which there are proceedings for defamation and insult amounted to 9.2% or 11 cases related to the aforementioned offences;

- Special dilemmas present on theoretical level, not less, in practice as well, causes the issue of criminal liability of legal entities for such offenses; the question to some extent is being considered in the context of the provisions of the Criminal Code that along with the amendments to the CC of 2009 provide wide repertoire of sanctions for legal entities;

- Survey results indicate that criminal cases against legal entity for offences defamation and / or insult, accounted for 7, 50%, i.e. can be seen in a total of 9 monitored cases;

- Regarding the question of the time interval elapsed from the time of committing the offense untill filing the private lawsuit, the available data indicate that this period on average is about 48 days;

- Regarding the profile of the private plaintiff, the data contained in the questionnaires provide a realistic picture in all of the monitored cases, the role of the private plaintiff for these offenses is "strictly reserved" for the public officials, which once again, confirms the thesis that public figures feel they are often exposed to criticism through the media and that they are particularly "vulnerable" to it;

- What concerns after the analysis is the issue of the time from filing a private lawsuit until the scheduling the first hearing;

- Statistical processing of provided data shows that within the monitored cases, this time on average is 145 days;

- What's disturbing is that in practice, still can be found such cases in which the waiting time exceeds 300 days. In one of the monitored cases the hearing was scheduled after 340 days have elapsed from filing the private lawsuit;

- Frequent postponement of hearings is an important factor influencing the delay of the proceedings and opens the question of respect for consistent fair trial standards within a reasonable time.

- The results from the monitoring process point to the following reasons for delaying the hearings:

    - The absence of the defendant has the highest share in the total picture - even in 106 of the monitored hearings; the processing of the gathered data argues that within all 350 monitored hearings (or in 77 cases) regarding offenses defamation and insult, the presence of the defendants was provided with an invitation; there was no case where involuntary detention was acceded;
    - Total of 29 hearings were adjourned because the private plaintiff did not attend the scheduled hearing;
    - In 13 of the monitored cases, the hearing was postponed due to absence of counsel of defense;
    - The absence of the damaged party appears in 8 cases;
    - The delay of the hearing because of summoned witness's absence takes the last place - only 2 such cases registered.

- Regarding the issue of interruption of the trial, the results show that the number of cases in which rupture occurred at the main hearing is 11 (or 3.1%). The reasons for this consist of the following:

    - preparation of the defense (in 4 cases);
    - obtaining new evidence (also in 4 cases);
    - vacation (2 cases) and
    - preparation of the indictment occurs as a reason for interruption of the trial in 1 of the cases that were monitored.

- The results available to the Coalition for a total of 28 cases that as of July 2011, received a court epilogue, show that in none of these cases has been imposed a fine for offences defamation and insult to the people who were surveyed;

- Statistical indicators point to the fact that only in two cases the accused was tried in absentia (or 1.7%); There are evident signs that in 66 monitored cases, i.e. 55% came to postponement of the hearing because they were no conditions for its maintenance, in terms of the presence of one of the parties, in this case the defendant.

- Regarding the issue of withdrawal of the lawsuit, the statistical processing of the data indicates the following situation:

    - in 7 cases the private lawsuit has been withdrawn when it comes to the primary defendant;

- the private prosecutor withdrew the complaint regarding the secondary defendant in 5 of the monitored cases that received a court finish and finally
- in 8 cases the complaint was fully withdrawn.;

- Reconciliation between parties is achieved in 7 cases, including:

  - in two cases there was court conciliation, while
  - in the remaining 5 cases there was extrajudicial reconciliation;
  - in few cases that are still ongoing, the judge adjourned the hearing because the attorney of the plaintiff informed him that extrajudicial settlement between the parties is in progress;

- The data show that out of 18 cases in which the defendant offered apology to the injured party, it was accepted in 4 cases.

- From the monitored cases can be concluded that out of 77 cases, verdict was rendered only in 6 cases, including:

  - conviction was not rendered in any of the monitored cases;
  - four criminal proceedings are completed with acquittal and
  - verdict that rejects the charges was made in two in 2 cases; in one of them, verdict for rejecting was rendered by failing to pursue criminal prosecution because of lapse;

- Regarding the announcement of the verdict, the situation is as follows:

  - In three cases the verdict is announced immediately and
  - Within the remaining (three) cases the court assumed responsibility for written notice of the rendered verdict.

RECOMENDATIONS

- Finding appropriate solutions that will allow shortening the time interval from filing the private lawsuit until the scheduling of the first hearing when it comes to offences defamation and insult;

- Taking appropriate measures to enable prevention of unnecessary delay of proceedings as an important factor that influences the delay of the proceedings and at the same time, that opens the question of respect for consistent fair trial standards within a reasonable time;

- Public officials are often subject to strong public criticism through the media, but it can not serve as a sufficient justification for filing so many private lawsuits for defamation and insult by their side. Instead of initiating litigation, it would be advisable that these people show a higher degree of tolerance to public criticism.

- The criminal responsibility of the media as legal entities and their sanctioning for offences defamation and insult deserves special attention in this place, so in that sense, we consider that is necessary to approach towards serious consideration of the mentioned issue and overcoming the numerous and heterogeneous standpoints in this area; namely it is necessary to open a broader theoretical debate in order to overcome the obvious problems and disagreements in court practice that for a long time has been trying to find a valid solution to the problems that are imposing in this sphere;

- In this context, it would be advisable to consider the legal provisions contained in the text of the Criminal Code of the Republic of Macedonia, which provide the possibility of imposing minor fines for legal entity (and the media) when the legal entity has abused his work and when there is danger in the future to repeat the offence (as, restrictment of participation in procedures for public announcement, the award of public supply contracts and public - private partnership; ban on establishing new legal entities, prohibition to use subsidies and other favorable credits; ban for allocation of funds to finance political parties from the budget of the Republic of Macedonia; revocation of a permit, license, concession, authorization or other right established by special law, etc.)..

- In the context of the issues discussed that represent integral part of our research, we believe it is necessary to get down to serious thinking and taking measures that will ensure successful implementation of mediation practice when it comes to offenses defamation and insult, which is consistent with the new established legislative framework, i.e. with the stated solutions in the new Law on Criminal Procedure that will be applied from January 2012.

- It would be in line with the understanding of modern aspects of criminal justice which are characterized by dynamic development and reform in many directions in order criminal justice to be equally available to all citizens and to be realized in the shortest possible time.

- We believe the new solutions that speak in favor of the application procedure for mediation could have a multiplier effect and in that sense they contribute to the relief of the judiciary in dealing with these criminal offences; simultaneously,

its practice can produce a positive impact regarding the involved parties in the proceedings and their undue delay.

- At the core of the presented ideas stands the idea of introducing (and practicing) the procedure for mediation as a tool for reconciliation between the parties taking into account the fact that it can be an efficient solution when for the so called bagatelle offenses which are prosecuted upon a private lawsuit; within the framework we include and the offences defamation and insult.

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